

213. INNKEEPERS**VII. VIOLATION AND ENFORCEMENT.(Cont'd)**

- 1787. — In general.
- 1788. — Necessity for hearing.
- 1789. — Conduct of hearing.
- 1790. Judgment and determination.
- 1791. — In general.
- 1792. — Findings, reasons, and record.
- 1793. — Effect and operation.
- 1794. Mode and extent of punishment.
- 1795. — In general.
- 1796. — Dismissal of or other limitation on litigation.
- 1797. — Fines and other monetary relief.
- 1798. — Incarceration.
- 1799. Review.
- 1800. Costs and fees.

VIII. WRONGFUL INJUNCTION.**(A) NATURE AND GROUNDS OF LIABILITY.**

- 1811. In general.
- 1812. Wrongful or improper issuance in general.
- 1813. Damages on dissolution in general.
- 1814. Viability, outcome, or scope of underlying action.
- 1815. Malice, bad faith, or lack of probable cause.
- 1816. Effect of bond or lack thereof; exclusivity of remedy.
- 1817. Liability in particular cases.
- 1818. Liability and immunity of government entities.

(B) PROCEEDINGS FOR DAMAGES.

- 1821. In general.
- 1822. Nature and form of remedy.
- 1823. Time for proceedings.
- 1824. Parties and persons entitled.
- 1825. Pleadings and suggestions of damages.
- 1826. Evidence.
- 1827. Trial and determination.
- 1828. Damages recoverable.
- 1829. — In general.
- 1830. — Measure and items in general.
- 1831. — Mitigation of damages.
- 1832. — Costs and fees in underlying action.
- 1833. — Amount.
- 1834. — Punitive damages.

VIII. WRONGFUL INJUNCTION.(Cont'd)

- 1835. Costs and fees in wrongful injunction action.

213. INNKEEPERS**SUBJECTS INCLUDED**

Regulation of inns, hotels, boarding houses, lodging houses, and all houses furnishing for compensation accommodation as a temporary home

Mutual rights, duties, and liabilities of keepers of such houses and their guests, boarders or lodgers

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Discrimination by reason of race, color, etc., see CIVIL RIGHTS

Intoxicants, regulation of sale, see INTOXICATING LIQUORS

Trailer camps and the like, see AUTOMOBILES, LICENSES

- 1. Power to regulate.
- 2. Statutory and municipal regulations.
- 3. Who are innkeepers.
- 4. Licenses and taxes.
- 5. Buildings.
- 6. Conduct of business.
- 7. Duty to receive guests.
- 8. Who are guests, boarders, or lodgers.
- 9. Duty to furnish accommodations.
- 10. Injury to person of guest.
- 10.20. — In general.
- 10.21. — What law governs.
- 10.22. — Persons liable in general; franchisors.
- 10.23. — Acts of employees, other guests, or third persons.
 - (1). In general.
 - (2). Protection against assault and other crimes.
- 10.24. — Defects in premises or appliances in general.

213. INNKEEPERS

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| <p>10.25. — Defective floors, stairs, or passageways, in general.</p> <p>10.26. — Bathrooms.</p> <p>10.27. — Recreational areas and activities; swimming pools.</p> <p>10.28. — Fire.</p> <p>10.29. — Contributory and comparative fault; assumption of risk.</p> <p>10.30. — Actions in general.</p> <p>10.31. — Pleading.</p> <p>10.32. — Presumptions and burden of proof.</p> <p style="padding-left: 20px;">(1). In general.</p> <p style="padding-left: 20px;">(2). Res ipsa loquitur.</p> <p>10.33. — Admissibility of evidence.</p> <p>10.34. — Weight and sufficiency of evidence.</p> <p style="padding-left: 20px;">(1). In general.</p> <p style="padding-left: 20px;">(2). Protection against assault and other crimes.</p> <p style="padding-left: 20px;">(3). Defects in premises or appliances in general.</p> <p style="padding-left: 20px;">(4). Defective floors, stairs, or passageways, in general.</p> <p style="padding-left: 20px;">(5). Bathrooms.</p> <p style="padding-left: 20px;">(6). Recreational areas and activities; swimming pools.</p> <p style="padding-left: 20px;">(7). Fire.</p> <p style="padding-left: 20px;">(8). Contributory and comparative fault; assumption of risk.</p> <p>10.35. — Questions for jury.</p> <p style="padding-left: 20px;">(1). In general.</p> <p style="padding-left: 20px;">(2). Protection against assault and other crimes.</p> <p style="padding-left: 20px;">(3). Defects in premises or appliances in general.</p> <p style="padding-left: 20px;">(4). Defective floors, stairs, or passageways, in general.</p> <p style="padding-left: 20px;">(5). Bathrooms.</p> <p style="padding-left: 20px;">(6). Recreational areas and activities; swimming pools.</p> <p style="padding-left: 20px;">(7). Fire.</p> <p style="padding-left: 20px;">(8). Contributory and comparative fault; assumption of risk.</p> <p>10.36. — Instructions.</p> <p style="padding-left: 20px;">(1). In general.</p> <p style="padding-left: 20px;">(2). Protection against assault and other crimes.</p> <p style="padding-left: 20px;">(3). Defects in premises or appliances in general.</p> | <p style="padding-left: 20px;">(4). Defective floors, stairs, or passageways, in general.</p> <p style="padding-left: 20px;">(5). Bathrooms.</p> <p style="padding-left: 20px;">(6). Recreational areas and activities; swimming pools.</p> <p style="padding-left: 20px;">(7). Fire.</p> <p style="padding-left: 20px;">(8). Contributory and comparative fault; assumption of risk.</p> <p style="padding-left: 20px;">(9). Presumptions and burden of proof; res ipsa loquitur.</p> <p>11. Loss of or injury to property of guest.</p> <p style="padding-left: 20px;">(.5). In general.</p> <p style="padding-left: 20px;">(1). Nature and extent of liability in general.</p> <p style="padding-left: 20px;">(2). Relation of parties.</p> <p style="padding-left: 20px;">(3). Care required of innkeeper.</p> <p style="padding-left: 20px;">(4). Loss of or injury to property by servants.</p> <p style="padding-left: 20px;">(5). Loss of or injuries to animals.</p> <p style="padding-left: 20px;">(6). Property for which innkeeper is liable.</p> <p style="padding-left: 20px;">(7). Rules and regulations.</p> <p style="padding-left: 20px;">(8). Property transported to and from depot.</p> <p style="padding-left: 20px;">(9). Place of leaving property.</p> <p style="padding-left: 20px;">(10). Contributory negligence.</p> <p style="padding-left: 20px;">(11). Statutes limiting liability.</p> <p style="padding-left: 20px;">(12). Actions.</p> <p>12. Compensation.</p> <p>13. Lien.</p> <p>14. Penalties for violations of regulations.</p> <p>14.1. Injuries to third persons.</p> <p>14.5. Liabilities of guests for injuries.</p> <p>15. Offenses by innkeepers.</p> <p>16. Offenses by guests, boarders, or lodgers.</p> |
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216. INSPECTION**SUBJECTS INCLUDED**

Examination and certification of quality, etc., of articles of merchandise by public authority, to determine and assure their fitness for use, commerce, etc., in general

More particularly such inspection for prevention of fraud

217. INSURANCE

Nature and scope of power to make such examination
 Constitutional and statutory provisions relating thereto
 Validity, construction, operation and effect of inspection laws
 Proceedings for their application and enforcement

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Food, regulations for securing wholesomeness and purity, see **FOOD, ADULTERATION**
 Health regulations, see **HEALTH**

Municipalities' powers in respect of inspection, see **MUNICIPAL CORPORATIONS**

Procedure—

Discovery and inspection of writings and other matters, see **CRIMINAL LAW, PRETRIAL PROCEDURE, FEDERAL CIVIL PROCEDURE**

Physical examination of person, see **DAMAGES, PRETRIAL PROCEDURE, FEDERAL CIVIL PROCEDURE**

Jury, inspection or view by, see **TRIAL, EMINENT DOMAIN**

1. Power to make regulations.
2. Constitutional and statutory provisions.
3. Subjects of inspection in general.
4. Inspection officers.
5. Mode of inspection in general.
6. Fees.
7. Violations of inspection laws.

217. INSURANCE**SUBJECTS INCLUDED**

Regulation and conduct of the business of insurance by individual underwriters or corporations, mutual or cooperative associations, and insurance agents or brokers

Organization, powers and liabilities of insurance companies and associations, and rights and liabilities of their members, officers, and agents

Contracts or policies of insurance and rights, liabilities, and remedies incident thereto

Insurance-related regulation of health maintenance organizations, preferred provider organizations, and related entities, as well as coverage and benefits provided by such entities

Patient compensation funds, and other excess malpractice liability funds

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Admiralty, choice of law and jurisdiction, see **ADMIRALTY** ¶1.20(2), 10(4)

Annuities, see **ANNUITIES**

Antitrust, see **ANTITRUST AND TRADE REGULATION**

Automobile accident indemnity funds, victims' recovery from, see **AUTOMOBILES V(C)**

Automobile no-fault law, effect on tort recovery, see **AUTOMOBILES V(D)**

Declaratory judgment, see **DECLARATORY JUDGMENT**

Deposit insurance, see **FINANCE, BANKING, AND CREDIT IX**

Employee welfare benefit plans, administration of and procedures related to, see **LABOR AND EMPLOYMENT**

Federal old age, survivors, and disability benefits, see **SOCIAL SECURITY**

Interpleader, see **INTERPLEADER**

Liability of health maintenance organizations, preferred provider organizations, and related entities, for malpractice and other torts, see **HEALTH**

Medicare and Medicaid, see **HEALTH**

Military personnel and their families, plans affecting (e.g. Servicemen's group life insurance, Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), war risk insurance), see **ARMED SERVICES** ¶50, 55-83

Relations between health care professionals and health maintenance organizations, preferred provider organizations, and related entities, see **HEALTH**

Specific performance, see **SPECIFIC PERFORMANCE** ¶78

Student loan insurance, see **EDUCATION** ¶1241

Sureties, see **PRINCIPAL AND SURETY**

217. INSURANCE

Unemployment insurance, see UNEMPLOYMENT COMPENSATION

Workers' compensation insurance, see WORKERS' COMPENSATION

I. IN GENERAL; NATURE OF INSURANCE, ¶1000-1015.

II. REGULATION IN GENERAL, ¶1020-1076.

(A) IN GENERAL, ¶1020.

(B) FEDERAL AGENCIES AND REGULATION, ¶1021.

(C) STATE AGENCIES AND REGULATION, ¶1022-1076.

III. WHAT LAW GOVERNS, ¶1080-1117(4).

(A) CHOICE OF LAW, ¶1080-1092.

(B) PREEMPTION; APPLICATION OF STATE OR FEDERAL LAW, ¶1100-1117(4).

IV. INSURANCE COMPANIES AND RELATED ENTITIES, ¶1120-1325.

(A) DOMESTIC COMPANIES IN GENERAL, ¶1120-1162.

(B) FOREIGN COMPANIES, ¶1163-1172.

(C) ALIEN COMPANIES, ¶1173-1182.

(D) SPECIAL TYPES OF ENTITIES, ¶1183-1325.

V. SURPLUS LINES, ¶1330-1349.

VI. FINANCIAL IMPAIRMENT, ¶1350-1421.

(A) IN GENERAL, ¶1350-1377.

(B) PROCEEDINGS, ¶1378-1401.

(C) SUPERVISORS, LIQUIDATORS, CONSERVATORS, REHABILITATORS OR RECEIVERS, ¶1402-1411.

(D) CLAIMS, ¶1412-1421.

VII. GUARANTY FUNDS OR ASSOCIATIONS, ¶1470-1512.

(A) IN GENERAL, ¶1470.

(B) ADMINISTRATION, ¶1471-1481.

(C) MEMBERSHIP, ¶1482-1485.

(D) CLAIMS AND PROCEEDINGS, ¶1486-1512.

VIII. UNDERWRITING, ¶1515-1548(3).

IX. SALES, MARKETING AND ADVERTISING PRACTICES, ¶1560-1578.

X. PRIVACY OF INFORMATION, ¶1580-1602.

XI. AGENTS AND AGENCY, ¶1604-1692.

(A) IN GENERAL, ¶1604-1610.

(B) LICENSES AND PERMITS; REGULATION IN GENERAL, ¶1611-1624.

XI. AGENTS AND AGENCY—Cont'd

(C) AGENTS FOR INSURERS, ¶1625-1654.

(D) AGENTS FOR APPLICANTS OR INSURED, ¶1655-1674.

(E) THIRD PARTY ADMINISTRATORS, ¶1675-1692.

XII. PROCUREMENT OF INSURANCE BY PERSONS OTHER THAN AGENTS, ¶1701-1704.

XIII. CONTRACTS AND POLICIES, ¶1710-1996.

(A) IN GENERAL, ¶1710-1728.

(B) FORMATION, ¶1729-1767.

(C) FORMAL REQUISITES, ¶1768-1778.

(D) INSURABLE INTEREST, ¶1779-1795.

(E) ESTOPPEL AND WAIVER, ¶1796-1801.

(F) RATIFICATION, ¶1802-1804.

(G) RULES OF CONSTRUCTION, ¶1805-1863.

(H) RELATIONS BETWEEN PARTIES; IMPLIED TERMS, ¶1864-1867.

(I) LOANS ON POLICIES, ¶1868.

(J) MODIFICATION OF POLICIES, ¶1869-1881.

(K) REFORMATION, ¶1882-1893(2).

(L) RENEWAL, ¶1894-1907.

(M) CONVERSION, ¶1908-1911.

(N) CANCELLATION OR REVOCATION BY INSURER, ¶1912-1940.

(O) SURRENDER OR TERMINATION BY, OR ON BEHALF OF, INSURED, ¶1941-1961.

(P) TERMINATION BY AGREEMENT, ¶1962.

(Q) REINSTATEMENT OR REVOCATION OF CANCELLATION, ¶1964-1966.

(R) RESCISSION FOR FRAUD OR MISTAKE, ¶1967-1970.

(S) TRANSFERS OF POLICIES, ¶1971-1996.

XIV. PREMIUMS, ¶2000-2087.

(A) IN GENERAL, ¶2000.

(B) OBLIGATION TO PAY, ¶2001-2002.

(C) PERSONS LIABLE, ¶2003-2004.

(D) AMOUNTS PAYABLE, ¶2005-2013.

(E) PAYMENT, ¶2014-2031.

(F) DEFAULT OR FAILURE TO PAY, ¶2032-2061.

(G) REFUND OR RECOVERY OF PREMIUMS PAID, ¶2062-2070.

217. INSURANCE

XIV. PREMIUMS—Cont'd

- (H) PREMIUM FINANCING ARRANGEMENTS, ⚭2072–2078.
- (I) ASSESSMENTS OR DUES, ⚭2079–2087.

XV. COVERAGE—IN GENERAL, ⚭2090–2120.

XVI. COVERAGE—PROPERTY INSURANCE, ⚭2125–2256.

- (A) IN GENERAL, ⚭2125–2202.
- (B) CROP INSURANCE, ⚭2203–2208.
- (C) FLOOD INSURANCE, ⚭2209–2213.
- (D) OCEAN MARINE INSURANCE, ⚭2214–2256.

XVII. COVERAGE—LIABILITY INSURANCE, ⚭2260–2399.

- (A) IN GENERAL, ⚭2260–2293.
- (B) COVERAGE FOR PARTICULAR LIABILITIES, ⚭2294–2399.

XVIII. COVERAGE—FIDELITY AND GUARANTY INSURANCE, ⚭2400–2413.

XIX. COVERAGE—LIFE INSURANCE, ⚭2420–2446.

XX. COVERAGE—HEALTH AND ACCIDENT INSURANCE, ⚭2450–2608.

- (A) IN GENERAL, ⚭2450.
- (B) MEDICAL INSURANCE, ⚭2451–2533.
- (C) DISABILITY INSURANCE, ⚭2534–2579.
- (D) ACCIDENT INSURANCE, ⚭2580–2608.

XXI. COVERAGE—TITLE INSURANCE, ⚭2610–2640.

XXII. COVERAGE—AUTOMOBILE INSURANCE, ⚭2645–2908.

- (A) IN GENERAL, ⚭2645–2695.
- (B) PROPERTY COVERAGE, ⚭2696–2733.
- (C) LIABILITY COVERAGE, ⚭2734–2771.
- (D) UNINSURED OR UNDERINSURED MOTORIST COVERAGE, ⚭2772–2816.
- (E) NO-FAULT COVERAGE; MEDICAL PAYMENTS, ⚭2817–2856.
- (F) GARAGE OR AUTOMOBILE SERVICE LIABILITY, ⚭2857–2886.
- (G) TRUCKERS' AND MOTOR CARRIERS' LIABILITY, ⚭2887–2908.

XXIII. DUTY TO DEFEND, ⚭2911–2942.

XXIV. AVOIDANCE, ⚭2950–3026.

- (A) IN GENERAL, ⚭2950–2985.
- (B) PARTICULAR KINDS OF INSURANCE, ⚭2986–3016.
- (C) SPECIAL CIRCUMSTANCES AFFECTING RISK, ⚭3017–3026.

XXV. FORFEITURE, ⚭3034–3073.

XXV. FORFEITURE—Cont'd

- (A) IN GENERAL, ⚭3034–3045.
- (B) PARTICULAR KINDS OF INSURANCE, ⚭3046–3073.

XXVI. ESTOPPEL AND WAIVER OF INSURER'S DEFENSES, ⚭3080–3132.

XXVII. CLAIMS AND SETTLEMENT PRACTICES, ⚭3140–3408.

- (A) IN GENERAL, ⚭3140.
- (B) CLAIM PROCEDURES, ⚭3141–3333.
 - 1. IN GENERAL, ⚭3141.
 - 2. NOTICE AND PROOF OF LOSS, ⚭3142–3201.
 - 3. COOPERATION, ⚭3202–3221.
 - 4. ADJUSTERS, ⚭3222–3243.
 - 5. THIRD-PARTY ADMINISTRATORS, ⚭3244–3246.
 - 6. APPRAISAL, ⚭3247–3264.
 - 7. ARBITRATION, ⚭3265–3332.
 - 8. MEDIATION, ⚭3333.
- (C) SETTLEMENT DUTIES; BAD FAITH, ⚭3334–3382.
- (D) REQUISITES AND VALIDITY OF SETTLEMENT OR RELEASE, ⚭3383–3389.
- (E) CONSTRUCTION AND EFFECT OF SETTLEMENT OR RELEASE, ⚭3390–3392.
- (F) PAYMENT OF PROCEEDS, ⚭3393–3408.

XXVIII. MISCELLANEOUS DUTIES AND LIABILITIES, ⚭3415–3427.

XXIX. PERSONS ENTITLED TO PROCEEDS, ⚭3433–3498.

- (A) IN GENERAL, ⚭3433–3441.
- (B) PROPERTY INSURANCE, ⚭3442–3454.
- (C) LIABILITY INSURANCE, ⚭3455–3459.
- (D) UNINSURED OR UNDERINSURED MOTORIST COVERAGE, ⚭3460.
- (E) NO-FAULT INSURANCE, ⚭3461.
- (F) LIFE, HEALTH AND ACCIDENT INSURANCE, ⚭3462–3490.
- (G) EVIDENCE; QUESTIONS OF LAW OR FACT, ⚭3491–3498.

XXX. RECOVERY OF PAYMENTS BY INSURER, ⚭3500–3532.

XXXI. CIVIL PRACTICE AND PROCEDURE, ⚭3540–3586.

XXXII. REINSURANCE, ⚭3590–3635.

XXXIII. OFFENSES AND PROSECUTIONS, ⚭3640–3656.

217. INSURANCE**I. IN GENERAL; NATURE OF INSURANCE.**

- 1000. In general.
- 1001. What is insurance.
- 1002. Who are insurers.
- 1004. Self-insurance and self-insurers.
- 1005. Gambling distinguished from insurance.
- 1006. Annuities distinguished from insurance.
- 1007. Types of insurance.
- 1008. — In general.
- 1009. — Property.
- 1010. — Liability.
- 1011. — Life.
- 1012. — Health and accident.
- 1013. — Title.
- 1014. — Fidelity and guaranty.
- 1015. — Automobile.

II. REGULATION IN GENERAL.**(A) IN GENERAL.**

- 1020. In general.

(B) FEDERAL AGENCIES AND REGULATION.

- 1021. In general.

(C) STATE AGENCIES AND REGULATION.

- 1022. In general.
- 1023. Departments or commissions of insurance.
- 1024. — In general.
- 1025. — Powers and duties.
- 1026. — Liabilities.
- 1027. — Actions.
 - (1). In general.
 - (2). Capacity to sue or be sued.
- 1028. Commissioners or superintendents of insurance.
- 1029. — In general.
- 1030. — Appointment.
- 1031. — Tenure.
- 1032. — Bonds.
- 1033. — Compensation.
- 1034. — Powers and duties.
- 1035. — Liabilities.
- 1036. — Conflicts of interest.
- 1037. — Actions.
- 1038. Employees.
- 1039. — In general.
- 1040. — Appointment.
- 1041. — Tenure.

II. REGULATION IN GENERAL.(Cont'd)

- 1042. — Compensation.
- 1043. — Powers and duties.
- 1044. — Liabilities.
- 1045. — Conflicts of interest.
- 1046. Records.
- 1047. Reports.
- 1048. Examination of companies.
- 1049. Fees and charges.
- 1050. Funds.
- 1051. Investigations and proceedings in general.
- 1052. — In general.
- 1054. — Production of documents; subpoenas.
- 1055. Hearings and adjudications.
- 1056. Orders.
- 1057. Rules and rulemaking.
- 1058. — In general.
- 1059. — Proceedings for adoption.
- 1060. — Promulgation.
- 1061. — Filing or recording.
- 1062. — Construction.
- 1063. — Amendment.
- 1064. — Repeal.
- 1065. — Expiration.
- 1066. — Enforcement in general.
- 1067. — Excuses for non-compliance.
- 1068. — Collateral attack.
- 1069. — Pleading and proof.
- 1070. Judicial remedies and review.
- 1071. Related agencies or departments.
- 1072. — In general.
- 1073. — Fire safety and prevention.
- 1074. — Health care.
- 1075. Cooperation with other state or nationwide agencies.
- 1076. Treaties.

III. WHAT LAW GOVERNS.**(A) CHOICE OF LAW.**

- 1080. In general.
- 1081. Selection of choice of law rules.
- 1082. — In general.
- 1083. — Procedural issues.
- 1084. — Federal forums.
 - See also FEDERAL COURTS* ¶3079(6).
- 1085. — State forums.
- 1086. Choice of law rules.

217. INSURANCE

III. WHAT LAW GOVERNS.(Cont'd)

- 1087. — In general.
- 1088. — Place of contracting or performance.
- 1089. — Significant relationship test.
- 1090. — Public policy.
- 1091. — Particular applications of rules.
 - (1). In general.
 - (2). Property insurance.
 - (3). Liability insurance.
 - (4). — In general.
 - (5). — Environmental coverages or exclusions.
 - (6). — Products liability coverages or exclusions.
 - (7). Life insurance.
 - (8). Health and accident insurance.
 - (9). Automobile insurance.
 - (10). — In general.
 - (11). — Uninsured or underinsured motorist coverage.
 - (12). — No-fault coverage.
 - (13). Insolvency or liquidation; claims.
 - (14). Reinsurance.
 - (15). Bad faith and unfair practices; punitive damages.
- 1092. Contractual or policy clauses; agreements.

(B) PREEMPTION: APPLICATION OF STATE OR FEDERAL LAW.

See also, *STATES* §18.41.

- 1100. In general.
- 1101. The "business of insurance" in general.
- 1102. Particular laws or activities.
- 1103. — In general.
- 1104. — Sales, marketing and advertising.
- 1105. — Annuities.
- 1106. — Anti-trust.
 - (1). In general.
 - (2). Boycotts.
- 1107. — Alternative dispute resolution.
- 1108. — Banking.
- 1109. — Health care.
- 1110. — Federal insurance programs.
- 1111. — Insolvency or bankruptcy.
- 1112. — Licensing or registration.
- 1113. — Maritime matters.
- See also, *ADMIRALTY* §1.20(2).
- 1114. — Risk retention groups.

III. WHAT LAW GOVERNS.(Cont'd)

- 1115. — Securities laws.
- 1116. — Taxation.
- 1117. — Employee benefits.
 - (1). In general.
 - (2). Retirement pensions.
 - (3). Health care benefits.
 - (4). Disability benefits.

IV. INSURANCE COMPANIES AND RELATED ENTITIES.

(A) DOMESTIC COMPANIES IN GENERAL.

- 1120. In general.
- 1121. Definitions.
- 1122. Incorporation and organization.
- 1123. — In general.
- 1124. — Organizing documents.
- 1125. Authority to do business.
- 1126. — In general.
- 1127. — Certificates, licenses or registration.
- 1128. — Territorial limitations.
- 1129. — Authorized business.
- 1130. Powers and duties.
- 1131. Directors, officers or other representatives.
- 1132. — In general.
- 1133. — Powers, duties, and liabilities.
- 1134. — Conflicts of interest.
- 1135. Financial requirements.
- 1136. — In general.
- 1137. — Deposits of securities or other assets.
- 1138. — Capital and surplus.
- 1139. — Reserves.
- 1140. — Assets and liabilities.
- 1141. — Risk limits.
- 1142. Investments.
- 1143. Members or subscribers.
- 1144. — In general.
- 1145. — Eligibility.
- 1146. — Subscription agreements; certificates.
- 1147. — Liabilities.
- 1148. — Assessments.
- 1149. — Voting rights.
- 1150. Stock and stockholders.
- 1151. — In general.
- 1152. — Voting rights.

217. INSURANCE**IV. INSURANCE COMPANIES AND
RELATED ENTITIES.(Cont'd)**

- 1153. Dividends or other distributions.
- 1154. Records.
- 1155. Reporting requirements.
- 1156. — In general.
- 1157. — Annual statements.
- 1158. — Disclosure of material transactions or financial interests.
- 1159. Mergers or consolidations.
- 1160. Conversions or reorganizations.
- 1161. Changes of domicile.
- 1162. Dissolution.

(B) FOREIGN COMPANIES.

- 1163. In general.
- 1164. What constitutes "doing business".
- 1165. Authority to do business.
- 1166. Financial requirements.
- 1167. Investments.
- 1168. Records.
- 1169. Reporting requirements.
- 1170. Domestication.
- 1171. Retaliatory provisions.
- 1172. Effect of noncompliance with regulations.

(C) ALIEN COMPANIES.

- 1173. In general.
- 1174. What constitutes "doing business".
- 1175. Authority to do business.
- 1176. Financial requirements.
- 1177. Investments.
- 1178. Records.
- 1179. Reporting requirements.
- 1180. Domestication.
- 1181. Retaliatory provisions.
- 1182. Effect of noncompliance with regulations.

(D) SPECIAL TYPES OF ENTITIES.

- 1183. Affiliates and subsidiaries.
- 1184. Holding companies.
- 1185. — In general.
- 1186. — Certificates, licenses or registration.
- 1187. — Authorized business; transaction standards.
- 1188. — Financial requirements.

**IV. INSURANCE COMPANIES AND
RELATED ENTITIES.(Cont'd)**

- 1189. — Mergers, acquisitions or consolidations.
- 1190. Captive insurers.
- 1191. — In general.
- 1192. — Definitions.
- 1193. — Incorporation.
 - (1). In general.
 - (2). Organizing documents.
- 1194. — Authority to do business.
 - (1). In general.
 - (2). Certificates, licenses or registration.
 - (3). Authorized business.
- 1195. — Directors, officers or other representatives.
- 1196. — Financial requirements.
 - (1). In general.
 - (2). Deposits of securities or other assets.
 - (3). Capital and surplus.
 - (4). Reserves.
- 1197. — Investments.
- 1198. — Reporting requirements.
 - (1). In general.
 - (2). Annual statements.
- 1199. — Conversions or reorganizations.
- 1200. — Changes in domicile.
- 1201. Producer controlled insurers.
- 1202. Reciprocal or cooperative insurers.
- 1203. — In general.
- 1204. — Definitions.
- 1205. — Incorporation.
 - (1). In general.
 - (2). Organizing documents.
- 1206. — Authority to do business.
 - (1). In general.
 - (2). Certificates, licenses or registration.
 - (3). Territorial limitations.
 - (4). Authorized business.
- 1207. — Powers and duties.
- 1208. — Directors, officers or other representatives.
 - (1). In general.
 - (2). Powers, duties, and liabilities.
 - (3). Conflicts of interest.
- 1209. — Financial requirements.

217. INSURANCE

IV. INSURANCE COMPANIES AND
RELATED ENTITIES.(Cont'd)

- (1). In general.
- (2). Deposits of securities or other assets.
- (3). Capital and surplus.
- (4). Reserves.
- (5). Assets and liabilities.
- (6). Risk limits.
- 1210. — Investments.
- 1211. — Members or subscribers.
 - (1). In general.
 - (2). Eligibility.
 - (3). Subscription agreements; certificates.
 - (4). Liabilities.
 - (5). Assessments.
 - (6). Voting rights.
- 1212. — Stock and stockholders.
 - (1). In general.
 - (2). Voting rights.
- 1213. — Dividends or other distributions.
- 1214. — Records.
- 1215. — Reporting requirements.
 - (1). In general.
 - (2). Annual statements.
- 1216. — Mergers or consolidations.
- 1217. — Conversions or reorganizations.
- 1218. Underwriting associations and related entities.
- 1219. — In general.
- 1220. — Definitions.
- 1221. — Organization.
 - (1). In general.
 - (2). Organizing documents; plans.
- 1222. — Authority to do business.
 - (1). In general.
 - (2). Certificates, licenses or registration.
 - (3). Territorial limitations.
 - (4). Authorized business.
- 1223. — Powers, duties, and liabilities.
- 1224. — Directors, officers or other representatives.
 - (1). In general.
 - (2). Powers, duties, and liabilities.
 - (3). Conflicts of interest.
- 1225. — Financial requirements.
 - (1). In general.

IV. INSURANCE COMPANIES AND
RELATED ENTITIES.(Cont'd)

- (2). Deposits of securities or other assets.
- (3). Capital and surplus.
- (4). Reserves.
- (5). Assets and liabilities.
- (6). Risk limits.
- 1226. — Investments.
- 1227. — Members or subscribers.
 - (1). In general.
 - (2). Eligibility.
 - (3). Subscription agreements; certificates.
 - (4). Liabilities.
 - (5). Assessments.
 - (6). Voting rights.
- 1228. — Dividends or other distributions.
- 1229. — Records.
- 1230. — Reporting requirements.
 - (1). In general.
 - (2). Annual statements.
- 1231. — Mergers or consolidations.
- 1232. — Conversions or reorganizations.
- 1233. — Changes of domicile.
- 1234. — Dissolution.
- 1235. Fraternal benefit organizations.
- 1236. — In general.
- 1237. — Definitions.
- 1238. — Incorporation.
 - (1). In general.
 - (2). Organizing documents.
- 1239. — Authority to do business.
 - (1). In general.
 - (2). Certificates, licenses or registration.
 - (3). Authorized business.
- 1240. — Powers and duties.
- 1241. — Directors, officers or other representatives.
 - (1). In general.
 - (2). Powers, duties, and liabilities.
 - (3). Conflicts of interest.
- 1242. — Financial requirements.
 - (1). In general.
 - (2). Deposits of securities or other assets.
 - (3). Capital and surplus.
 - (4). Reserves.

217. INSURANCE**IV. INSURANCE COMPANIES AND
RELATED ENTITIES.(Cont'd)**

- (5). Assets and liabilities.
- (6). Risk limits.
- 1243. — Investments.
- 1244. — Members or subscribers.
 - (1). In general.
 - (2). Eligibility.
 - (3). Subscription agreements; certificates.
 - (4). Liabilities.
 - (5). Assessments.
 - (6). Voting rights.
- 1245. — Dividends or other distributions.
- 1246. — Records.
- 1247. — Reporting requirements.
 - (1). In general.
 - (2). Annual statements.
- 1248. — Mergers or consolidations.
- 1249. — Conversions or reorganizations.
- 1250. Health related entities.
- 1251. — In general.
- 1252. — Definitions.
- 1253. — Incorporation.
 - (1). In general.
 - (2). Organizing documents.
- 1254. — Authority to do business.
 - (1). In general.
 - (2). Certificates, licenses or registration.
 - (3). Territorial limitations.
 - (4). Authorized business.
- 1255. — Powers and duties.
- 1256. — Directors, officers or other representatives.
 - (1). In general.
 - (2). Powers, duties, and liabilities.
 - (3). Conflicts of interest.
- 1257. — Financial requirements.
 - (1). In general.
 - (2). Deposits of securities or other assets.
 - (3). Capital and surplus.
 - (4). Reserves.
 - (5). Assets and liabilities.
 - (6). Risk limits.
- 1258. — Investments.
- 1259. — Members or subscribers.
 - (1). In general.

**IV. INSURANCE COMPANIES AND
RELATED ENTITIES.(Cont'd)**

- (2). Eligibility.
- (3). Subscription agreements; certificates.
- (4). Liabilities.
- (5). Assessments.
- (6). Voting rights.
- 1260. — Dividends or other distributions.
- 1261. — Records.
- 1262. — Reporting requirements.
 - (1). In general.
 - (2). Annual statements.
- 1263. — Mergers or consolidations.
- 1264. — Conversions or reorganizations.
- 1265. — Dissolution.
- 1266. Motor clubs and non-health service corporations.
- 1267. — In general.
- 1268. — Definitions.
- 1269. — Incorporation.
 - (1). In general.
 - (2). Organizing documents.
- 1270. — Authority to do business.
 - (1). In general.
 - (2). Certificates, licenses or registration.
 - (3). Authorized business.
- 1271. — Powers and duties.
- 1272. — Directors, officers or other representatives.
- 1273. — Financial requirements.
 - (1). In general.
 - (2). Deposits of securities or other assets.
 - (3). Reserves.
 - (4). Assets and liabilities.
- 1274. — Investments.
- 1275. — Members or subscribers.
 - (1). In general.
 - (2). Subscription agreements; certificates.
- 1276. — Records.
- 1277. — Reporting requirements.
 - (1). In general.
 - (2). Annual statements.
- 1278. — Mergers or consolidations.
- 1279. — Conversions or reorganizations.
- 1280. — Dissolution.

217. INSURANCE

**IV. INSURANCE COMPANIES AND
RELATED ENTITIES.(Cont'd)**

- 1281. Warranty associations.
- 1282. — In general.
- 1284. — Authority to do business.
 - (1). In general.
 - (2). Certificates, licenses or registration.
- 1291. Risk-retention and purchasing groups.
- 1292. — In general.
- 1293. — Definitions.
- 1294. — Authority to do business.
 - (1). In general.
 - (2). Certificates, licenses or registration.
 - (3). Authorized business.
- 1295. Premium finance companies.
- 1296. — In general.
- 1297. — Definitions.
- 1298. — Authority to do business.
 - (1). In general.
 - (2). Certificates, licenses or registration.
 - (3). Authorized business.
- 1299. — Records.
- 1300. — Reporting requirements.
 - (1). In general.
 - (2). Annual statements.
- 1301. Government sponsored programs.
- 1302. — In general.
- 1303. — Definitions.
- 1304. — Plan of operation or management.
- 1305. — Powers, duties and proceedings.
- 1306. — Directors, officers or other representatives.
 - (1). In general.
 - (2). Powers, duties, and liabilities.
- 1307. — Financial requirements.
- 1308. — Members or subscribers.
 - (1). In general.
 - (4). Assessments.
- 1309. — Records.
- 1311. Miscellaneous entities.
- 1312. — In general.
- 1315. — Authority to do business.
- 1317. — Directors, officers or other representatives.
- 1318. — Financial requirements.

**IV. INSURANCE COMPANIES AND
RELATED ENTITIES.(Cont'd)**

- 1322. — Dividends or other distributions.
- 1325. — Mergers or consolidations.

V. SURPLUS LINES.

- 1330. In general.
- 1345. Brokers and agents.
- 1346. — In general.
- 1347. — Licenses.
- 1348. — Powers and duties.
- 1349. — Records and reports.

VI. FINANCIAL IMPAIRMENT.**(A) IN GENERAL.**

- 1350. In general.
- 1351. Remedies.
- 1352. — In general.
- 1353. — Exclusiveness of remedies.
- 1354. — Injunctions.
- 1355. — Declaratory judgments.
- 1356. — Correction by insurer.
- 1357. Grounds for supervision, conservation, rehabilitation or liquidation.
- 1358. Agents.
- 1359. — In general.
- 1360. — Notice to.
- 1361. — Duties and liabilities.
- 1362. Assets.
- 1363. — In general.
- 1364. — Attachment and garnishment.
- 1365. — Listing and collection.
- 1366. — Unpaid premiums.
- 1367. — Preferences, liens and fraudulent transactions.
- 1368. — Distribution or sale.
- 1369. Liabilities.
- 1370. — In general.
- 1371. — Unearned premiums.
- 1372. Assessments.
- 1373. Set-offs and counterclaims.
- 1374. Records and reports.
- 1375. Federal receiverships.
- 1376. Reinsurance.
- 1377. Effect on policies.

(B) PROCEEDINGS.

- 1378. In general.
- 1379. Notice.

217. INSURANCE**VI. FINANCIAL IMPAIRMENT.(Cont'd)**

- 1380. Petitions.
- 1381. Commencement; time and notice requirements.
- 1382. Summary proceedings.
- 1383. Seizure orders.
- 1384. Jurisdiction and venue.
- 1385. Stays of proceedings.
- 1386. Effect on other proceedings.
- 1387. Evidence.
- 1388. Questions of law or fact.
- 1389. Hearings.
- 1390. Termination.
- 1391. Re-opening or rehearing.
- 1392. Orders.
- 1393. — In general.
- 1394. — Rehabilitation.
- 1395. — Conservation.
- 1396. — Liquidation.
- 1397. — Receivership.
- 1398. — Restrictions on authority to do business.
- 1399. Costs and expenses.
- 1400. Bonds.
- 1401. Review.

(C) SUPERVISORS, LIQUIDATORS, CONSERVATORS, REHABILITATORS OR RECEIVERS.

- 1402. In general.
- 1403. Appointment.
- 1404. Tenure; discharge.
- 1405. Powers and duties.
- 1405.5. Liabilities and immunities.
- 1406. Actions.
- 1407. — In general.
- 1408. — Evidence.
- 1409. — Questions of law or fact.
- 1410. Recommendations.
- 1411. Review.

(D) CLAIMS.

- 1412. In general.
- 1413. Filing.
- 1414. Priorities.
- 1415. Special or third-party claims.
- 1416. Disputed claims.
- 1417. Sureties' claims.
- 1418. Secured creditors' claims.

VI. FINANCIAL IMPAIRMENT.(Cont'd)

- 1419. Claims by non-residents against domestic companies.
- 1420. Claims by residents against foreign companies.
- 1421. Unclaimed or withheld funds.

VII. GUARANTY FUNDS OR ASSOCIATIONS.**(A) IN GENERAL.**

- 1470. In general.

(B) ADMINISTRATION.

- 1471. In general.
- 1472. Creation.
- 1473. Powers and duties.
- 1474. Inspection of books and records.
- 1475. Fees and expenses.
- 1476. Plan of operation.
- 1477. Prevention of insolvencies.
- 1478. Liabilities of associations or funds.
- 1479. Notice to policy holders.
- 1480. Supervision or regulation.
- 1481. Reports.

(C) MEMBERSHIP.

- 1482. In general.
- 1483. Mandatory membership or contributions.
- 1484. Exemptions.
- 1485. Assessments.

(D) CLAIMS AND PROCEEDINGS.

- 1486. In general.
- 1487. Policies covered.
- 1488. Claimants covered.
- 1489. — In general.
- 1490. — Residents.
- 1491. — Non-residents.
- 1492. — Insurers, reinsurers and similar entities.
- 1493. Claims covered.
- 1494. — In general.
- 1495. — Costs and expenses.
- 1496. — Penalties and punitive damages.
- 1497. — Subrogation claims.
- 1498. — Settlements.
- 1499. Limitations on amount of coverage.
- 1500. Non-duplication; deductions and off-sets.

217. INSURANCE

VII. GUARANTY FUNDS OR ASSOCIATIONS.(Cont'd)

- 1501. Exhaustion of other sources of recovery.
- 1502. Procedure.
- 1503. — In general.
- 1504. — Filing.
 - (1). In general.
 - (2). Time requirements.
- 1505. — Investigation.
- 1506. — Evidence; proof of claim.
- 1507. — Determination.
- 1508. — Judicial remedies and review.
- 1509. Effect of payment.
- 1510. — In general.
- 1511. — Reimbursement and subrogation.
- 1512. — Claimants' rights against insured.

VIII. UNDERWRITING.

- 1515. In general.
- 1516. Actuaries.
- 1517. Fair access requirements; discrimination.
- 1518. — In general.
- 1519. — Race.
- 1520. — Age.
- 1521. — Sex.
- 1522. — Sexual orientation; homosexuality.
- 1523. — Acquired immune deficiency syndrome (AIDS) and related conditions.
- 1524. — Genetic testing.
- 1525. Adverse underwriting decisions.
- 1526. — In general.
- 1527. — Review.
- 1528. Assigned risks.
- 1529. — In general.
- 1532. — Property and liability insurance; automobiles.
 - Assigned claims plans, see Automobiles V(C).*
- 1535. — Medical malpractice insurance.
- 1537. Joint underwriting associations and related entities.
- 1538. — In general.
- 1539. — Risk apportionment plans.
- 1540. Rates and rate setting.
- 1541. — In general.
- 1542. — Factors and standards.
 - (1). In general.

VIII. UNDERWRITING.(Cont'd)

- (2). Loss experience; allowable expenses.
- (3). Substandard risks.
- 1543. — Modification of rates.
 - (1). In general.
 - (2). Refunds; credits.
 - (3). Modification during policy period.
- 1544. — Filings.
 - (1). In general.
 - (2). Duty to file.
 - (3). Sufficiency of filings; forms.
- 1545. — Actions and proceedings.
 - (1). In general.
 - (2). Primary jurisdiction; exhaustion of remedies.
 - (3). Parties.
 - (4). Hearings and findings.
 - (5). Questions of law and fact.
 - (6). Determination; orders.
 - (7). Review.
- 1546. — Evidence.
- 1547. — Rating organizations.
 - (1). In general.
 - (2). Notices.
 - (3). Deviation.
- 1548. — Records.
 - (1). In general.
 - (2). Duty to maintain.
 - (3). Inspection.

IX. SALES, MARKETING AND ADVERTISING PRACTICES.

- 1560. In general.
- 1561. Disclosures in general.
- 1562. Misrepresentation; false advertising.
- 1563. — In general.
- 1564. — Premiums, rates or charges.
- 1565. — Coverage.
- 1566. — Financial condition.
- 1567. Rebates or other improper inducements.
- 1568. Boycotts, intimidation or coercion.
- 1569. Defamation of other insurers.
- 1570. Fictitious grouping.
- 1571. Unauthorized insurers.
- 1572. Vending machine sales.
- 1573. Mass marketing plans.
- 1574. Actions and proceedings.

217. INSURANCE**IX. SALES, MARKETING AND ADVERTISING PRACTICES.**(Cont'd)

- 1575. — In general.
- 1576. — Evidence.
- 1577. — Questions of law or fact.
- 1578. Civil penalties.

X. PRIVACY OF INFORMATION.

Evidentiary and discovery privileges, see PRIVILEGED COMMUNICATIONS AND CONFIDENTIALITY. Records and information in hands of Insurance Commissioner and other government entities, see RECORDS.

- 1580. In general.
- 1581. Policy and application.
- 1582. — In general.
- 1583. — Pretext interviews.
- 1584. — Notice of information practices.
- 1585. — Marketing or research questions.
- 1586. Access to information concerning insured.
- 1587. — In general.
- 1588. — Correction, amendment or deletion of information.
- 1589. False pretenses to obtain information.
- 1590. Disclosure by insurer.
- 1591. — In general.
- 1592. — Authorization of disclosure; forms.
- 1593. — Unauthorized disclosure.
- 1594. — Confidentiality of insurer's records and reports.
- 1595. — Disclosure to government agencies.
 - (1). In general.
 - (2). Insurance department.
- 1597. Immunities.
- 1599. Proceedings.
- 1600. — In general.
- 1601. — Commissioner as agent for organizations engaged in foreign transactions.
- 1602. — Review.

XI. AGENTS AND AGENCY.**(A) IN GENERAL.**

- 1604. In general.
- 1605. Agency for insurer or insured.
- 1606. — In general.
- 1607. — Effect of statutes.
- 1608. — Dual agency.

XI. AGENTS AND AGENCY.(Cont'd)

- 1609. — Brokers.
- 1610. — Procurers of group insurance.

(B) LICENSES AND PERMITS; REGULATION IN GENERAL.

- 1611. In general.
- 1612. Eligibility for license.
- 1613. — In general.
- 1614. — Education requirements.
- 1615. Issuance or refusal.
- 1616. Renewal.
- 1617. Discipline.
- 1618. — In general.
- 1619. — Investigations.
- 1620. — Proceedings.
- 1621. Resignation, surrender or abandonment of license.
- 1622. Judicial review.
- 1623. Fees.
- 1624. Agents for foreign or alien insurers; nonresidents.

(C) AGENTS FOR INSURERS.

- 1625. In general.
- 1626. Appointment or employment.
- 1627. Duration and termination of agency.
- 1628. Implied agency.
- 1629. Estoppel to deny agency.
- 1630. Expiration records or data.
- 1631. Evidence as to authority.
- 1632. Scope and extent of agency.
- 1633. — In general.
- 1634. — Contracts.
 - (1). In general.
 - (2). General or special agents.
 - (3). Soliciting agents.
 - (4). Assistants and clerks.
 - (5). Instructions or undisclosed limitations.
- 1635. — Evidence.
- 1636. — Questions of law or fact.
- 1637. Unauthorized or wrongful acts of agent.
- 1638. — In general.
- 1639. — Negligence.
- 1640. — Fraud or misrepresentation.
- 1641. — Ratification.
- 1642. Notice to agent.

217. INSURANCE**XI. AGENTS AND AGENCY.(Cont'd)**

- 1643. Duties and liabilities of agent to insurer.
- 1644. — In general.
- 1645. — Accounting; handling of premiums.
 - (1). In general.
 - (2). Actions.
- 1646. — Cancellation or reduction of policies.
- 1647. — Negligence.
- 1648. — Fraud.
- 1649. — Conversion.
- 1650. Duties and liabilities of insurer to agent.
- 1651. — In general.
- 1652. — Compensation.
 - (1). In general.
 - (2). Right to commissions.
 - (3). Renewal commissions; termination of employment.
 - (4). Canceled policies.
 - (5). Effect of noncompliance with regulations.
 - (6). Reimbursement of advances, expenses, and losses.
 - (7). Subagents.
 - (8). Actions for compensation.
- 1653. — Contractual duties, and breach thereof.
 - (1). In general.
 - (2). Actions.
- 1654. Duties and liabilities to insureds or other third persons.

(D) AGENTS FOR APPLICANTS OR INSURED.

- 1655. In general.
- 1656. Appointment or employment.
- 1657. Duration and termination of agency.
- 1658. Scope and extent of agency.
- 1659. — In general.
- 1660. — Representation of multiple parties.
- 1661. — Evidence.
- 1662. — Questions of fact.
- 1663. Notice to agents.
- 1664. Unauthorized or wrongful acts.
- 1665. — In general.
- 1666. — Ratification.

XI. AGENTS AND AGENCY.(Cont'd)

- 1667. — Actions.
 - 1668. Duties and liabilities to insureds or others.
 - 1669. — In general.
 - 1670. — Negligence in general.
 - 1671. — Failure to procure coverage.
 - 1672. — Fraud or misrepresentation; concealment.
 - 1673. — Actions.
 - 1674. Duties and liabilities of insureds to agents.
- (E) THIRD PARTY ADMINISTRATORS.**
- 1675. In general.
 - 1676. Agreements with principals.
 - 1677. License or registration.
 - 1681. Compensation.
 - 1682. Notice requirements.
 - 1684. Underwriting authority.
 - 1692. Liabilities.

XII. PROCUREMENT OF INSURANCE BY PERSONS OTHER THAN AGENTS.

- 1701. In general.
- 1702. Contracts and other instruments.
- 1703. Negligence.
- 1704. Actions.

XIII. CONTRACTS AND POLICIES.**(A) IN GENERAL.**

- 1710. In general.
- 1711. Nature of contracts or policies.
- 1712. — In general.
- 1713. — Policies considered as contracts.
- 1714. — Contracts or policies as law between parties.
- 1715. — Adhesion contracts.
- 1716. — Particular types of insurance.
- 1717. Property in, and possession of, policies.
- 1718. — In general.
- 1719. — Ownership.
- 1720. Validity and enforceability.
- 1721. — In general.
- 1722. — Violation of statute.
- 1723. — Discrimination between insureds.
- 1724. — Fraud or mistake.
- 1725. — Public policy.
- 1726. — Partial invalidity.

217. INSURANCE**XIII. CONTRACTS AND POLICIES.(Cont'd)**

- 1727. Evidence.
- 1728. Questions of law or fact.

(B) FORMATION.

- 1729. In general.
- 1730. Assent of parties.
- 1731. Offer and acceptance; applications.
- 1732. — In general.
- 1733. — Form and contents of applications.
- 1734. — Necessity of acceptance and approval.
- 1735. — What constitutes acceptance.
- 1736. — Effect of delay.
- 1737. — Notice of rejection.
- 1738. — Effect of acceptance and approval.
- 1739. — Offers to insure and acceptances thereof.
- 1740. — Counter-offers and acceptances thereof.
- 1741. Executory agreements.
- 1742. Oral contracts; negotiations.
- 1743. — In general.
- 1744. — Authority of agent.
- 1745. — Merger in policies.
- 1746. Preliminary or temporary insurance.
- 1747. — In general.
- 1748. — Binders.
- 1749. Execution.
- 1750. Attaching documents to policies.
- 1751. — In general.
- 1752. — Applications or copies thereof.
- 1753. Delivery.
- 1754. — In general.
- 1755. — Necessity.
- 1756. — Sufficiency and effect.
- 1757. — Conditional delivery or acceptance in general.
- 1758. — Good health of insured.
- 1759. — Acceptance and effect thereof.
- 1760. Payment of first premium.
- 1761. — In general.
- 1762. — Necessity.
- 1763. — Good health or lifetime of insured.
- 1764. — Mode of payment.
 - (1). In general.

XIII. CONTRACTS AND POLICIES.(Cont'd)

- (2). By note or check.
- 1765. Group insurance.
- 1766. Evidence.
- 1767. Questions of law or fact.

(C) FORMAL REQUISITES.

- 1768. In general.
- 1769. Conspicuity and legibility.
- 1770. — In general.
- 1771. — Size and style of type.
- 1772. — Exclusions, exceptions or limitations.
- 1773. Plain language requirements.
- 1774. Filing and approval.
- 1775. Standardized policies.
- 1776. Group insurance.
- 1777. Evidence.
- 1778. Questions of law or fact.

(D) INSURABLE INTEREST.

- 1779. In general.
- 1780. Necessity in general.
- 1781. Lack of insurable interest.
- 1782. — In general.
- 1783. — Public policy.
- 1784. — Creation of wagering contracts.
- 1785. Right to question existence of interest.
- 1786. Assignments of policies to persons without interest.
- 1787. Termination of interest.
- 1788. Particular types of coverage.
- 1789. — In general.
- 1790. — Property and title insurance.
 - (1). In general.
 - (2). Necessity.
 - (3). Agents, consignees, factors or bailees.
 - (4). Buyers or sellers of personal property.
 - (5). Vendors or purchasers of real property.
 - (6). Creditors or lienholders in general.
 - (7). Mortgagors or mortgagees.
 - (8). Landlords or tenants.
 - (9). Lessors or lessees of personal property.
 - (10). Spouses.

217. INSURANCE

XIII. CONTRACTS AND POLICIES.(Cont'd)

- 1791. — Life insurance.
 - (1). In general.
 - (2). Parents and children.
 - (3). Spouses and former spouses.
 - (4). Creditors.
 - (5). Corporations, partnerships, associations or employers.
- 1791.5. — Accident insurance.
- 1792. — Disability insurance.
- 1793. — Medical insurance.
- 1794. — Liability insurance.
- 1794.5. — Automobile insurance.
- 1795. — Group insurance.

(E) ESTOPPEL AND WAIVER.

- 1796. In general.
- 1797. Insurable interest.
- 1798. Payment of first premium.
- 1799. Estoppel of or waiver by insureds.
- 1800. — In general.
- 1801. — Duty to read policies.

(F) RATIFICATION.

- 1802. In general.
- 1803. By insurers.
- 1804. By insureds.

(G) RULES OF CONSTRUCTION.

- 1805. In general.
- 1806. Application of rules of contract construction.
- 1807. Function of, and limitations on, courts, in general.
- 1808. Ambiguity in general.
- 1809. Construction or enforcement as written.
- 1810. Construction as a whole.
- 1811. Intention.
- 1812. — In general.
- 1813. — Language of policies.
- 1814. — Entire contract.
- 1815. Reasonableness.
- 1816. — In general.
- 1817. — Reasonable expectations.
- 1818. — Reasonable persons.
- 1819. Understanding of ordinary or average persons.
- 1820. — In general.

XIII. CONTRACTS AND POLICIES.(Cont'd)

- 1821. — Laypersons or experts.
- 1822. Plain, ordinary or popular sense of language.
- 1823. Exceptions, exclusions or limitations.
- 1824. Definitions in policies.
- 1825. Particular words or terms.
- 1826. Repugnant or conflicting clauses.
- 1827. Construction to be unstrained.
- 1828. Construction to be fair.
- 1829. Liberal or strict construction.
- 1830. Favoring insureds or beneficiaries; disfavoring insurers.
- 1831. — In general.
- 1832. — Ambiguity, uncertainty or conflict.
 - (1). In general.
 - (2). Necessity of ambiguity.
 - (3). Mandated language.
- 1833. — Status or bargaining power of insureds.
- 1834. — Particular types of coverage.
 - (1). In general.
 - (2). Life, health or accident.
 - (3). Liability or indemnity.
- 1835. — Particular portions or provisions of policies.
 - (1). In general.
 - (2). Exclusions, exceptions or limitations.
- 1836. Favoring coverage or indemnity; disfavoring forfeiture.
- 1837. Matters extrinsic to policies in general.
- 1838. Materials related or attached to policies.
- 1839. — In general.
- 1840. — Applications.
- 1841. — Binders.
- 1842. — Executory agreements.
- 1843. — Premium receipts.
- 1844. — Printed or written provisions.
- 1845. — Margins or backs of policies; endorsements.
 - (1). In general.
 - (2). Conflicts between policies and endorsements.
- 1846. — Attachments in general.
- 1847. — Group insurance certificates.
- 1848. Charters, bylaws or rules of insurers.

217. INSURANCE**XIII. CONTRACTS AND POLICIES.(Cont'd)**

- 1849. Existing law.
- 1850. — In general.
- 1851. — As part of policies.
- 1852. — Automobile insurance.
- 1853. Construction by parties; course of conduct or prior dealings.
- 1854. Usage of trade or business.
- 1855. Dictionaries.
- 1856. Entire or severable nature of policies or contracts.
- 1857. Evidence.
- 1858. — In general.
- 1859. — Admissibility.
- 1860. — Presumptions.
- 1861. — Burden of proof.
- 1862. — Weight and sufficiency.
- 1863. Questions of law or fact.

**(H) RELATIONS BETWEEN PARTIES;
IMPLIED TERMS.**

- 1864. In general.
- 1865. Third-party beneficiaries.
- 1866. Fiduciary relationships in general.
- 1867. Good faith and fair dealing.

(I) LOANS ON POLICIES.

- 1868. In general.

(J) MODIFICATION OF POLICIES.

- 1869. In general.
- 1870. Powers of agents or brokers.
- 1871. Notice.
- 1872. Assent of parties.
- 1873. Oral modifications.
- 1874. Endorsements or attachments.
- 1875. Consideration.
- 1876. Effect.
- 1877. — In general.
- 1878. — Creation of new policy.
- 1879. Group insurance.
- 1880. Evidence.
- 1881. Questions of law or fact.

(K) REFORMATION.

- 1882. In general.
- 1883. Right to reformation in general.
- 1884. Grounds.
- 1885. — In general.

XIII. CONTRACTS AND POLICIES.(Cont'd)

- 1886. — Fraud or misrepresentation.
 - (1). In general.
 - (2). Property or interest covered.
 - (3). Title or ownership.
 - (4). Terms or durations of policies.
 - (5). Premiums.
- 1887. — Mistake.
 - (1). In general.
 - (2). Property or interest covered.
 - (3). Terms or durations of policies.
 - (4). Amounts of coverage.
 - (5). Premiums.
- 1888. Necessity for reformation.
- 1889. — In general.
- 1890. — Requirements of equity.
- 1891. Actions.
- 1892. — In general.
- 1893. — Evidence.
 - (1). In general.
 - (2). Weight and sufficiency.

(L) RENEWAL.

- 1894. In general.
- 1895. Powers of agents or brokers.
- 1896. Payment of premiums.
- 1897. Right or obligation to renew.
- 1898. — In general.
- 1899. — Grounds or cause for nonrenewal.
- 1900. Notice in general.
- 1901. Assent of parties in general.
- 1902. Offers and acceptances.
- 1903. Terms, conditions and subject matter; notice of changes.
- 1904. New policies as separate policies.
- 1905. Group insurance.
- 1906. Evidence.
- 1907. Questions of law or fact.

(M) CONVERSION.

- 1908. In general.
- 1909. Group insurance.
- 1910. — In general.
- 1911. — Notice.

(N) CANCELLATION OR REVOCATION BY INSURER.

- 1912. In general.
- 1913. Right to cancel.
- 1914. — In general.

217. INSURANCE

XIII. CONTRACTS AND POLICIES.(Cont'd)

- 1915. — Estoppel or waiver in general.
- 1916. — Noncancellation clauses.
- 1917. — Creditors or third persons.
- 1918. Time for cancellation.
- 1919. — In general.
- 1920. — Subsequent to claims or loss.
- 1921. Grounds for cancellation.
- 1922. — In general.
- 1923. — Fraud or misrepresentation.
- 1924. — Claim or loss experience.
- 1925. — Driving record.
- 1926. — License and registration.
- 1927. Procedure for cancellation.
- 1928. — In general.
- 1929. — Notice.
 - (1). In general.
 - (2). Sufficiency in general.
 - (3). Time.
 - (4). Conspicuity and legibility; type size or style.
 - (5). Plain language requirements.
 - (6). Service or mailing.
 - (7). — In general.
 - (8). — Inadequate or incorrect address.
 - (9). — New or changed address.
 - (10). Notice to third persons.
 - (11). — In general.
 - (12). — Agents or brokers.
 - (13). — Public officers.
- 1930. Repayment of unearned premiums.
- 1931. Waiver or ratification of defective cancellation.
- 1932. Operation and effect.
- 1933. Effective date.
- 1934. Group insurance.
- 1935. Evidence.
- 1936. Questions of law or fact.
- 1937. Remedies for wrongful cancellation.
- 1938. — In general.
- 1939. — Persons entitled.
- 1940. — Anticipatory breach.

(O) SURRENDER OR TERMINATION BY, OR ON BEHALF OF, INSURED.

- 1941. In general.
- 1942. Authority or consent.
- 1943. — In general.

XIII. CONTRACTS AND POLICIES.(Cont'd)

- 1944. — Agents or brokers.
- 1945. — Third persons.
- 1946. Time.
- 1947. Estoppel and waiver.
- 1948. Right to surrender.
- 1949. — In general.
- 1950. — Life insurance.
- 1951. — Accident insurance.
- 1952. Acts constituting surrender or termination.
- 1953. Validity or enforceability.
- 1954. Notice.
- 1955. Operation and effect.
- 1956. Effective date.
- 1957. Paid-up value.
- 1958. Group insurance.
- 1959. Abandonment.
- 1960. Evidence.
- 1961. Questions of law or fact.

(P) TERMINATION BY AGREEMENT.

- 1962. In general.

(Q) REINSTATEMENT OR REVOCATION OF CANCELLATION.

- 1964. In general.
- 1965. After termination or cancellation by insurers in general.
- 1966. After surrender or termination by insureds.

(R) RESCISSION FOR FRAUD OR MISTAKE.

- 1967. In general.
- 1968. Rescission by insurers.
- 1969. Rescission by insureds or beneficiaries.
- 1970. Actions.

(S) TRANSFERS OF POLICIES.

- 1971. In general.
- 1972. Regulation in general.
- 1973. Policy provisions, in general.
- 1974. Beneficiaries rights to assign.
- 1975. Consent.
- 1976. — In general.
- 1977. — By beneficiaries.
- 1978. — By insureds.
- 1979. — By mortgagees.
- 1980. — By insurers.

217. INSURANCE**XIII. CONTRACTS AND POLICIES.(Cont'd)**

- (1). In general; necessity.
- (2). Sufficiency and effect.
- (3). Waiver or estoppel.
- 1981. Form and requisites; validity.
- 1982. — In general.
- 1983. — Oral assignments.
- 1984. — Consideration.
- 1985. — Delivery and acceptance.
- 1986. — Transfer of insured property.
- 1987. — Notice.
- 1988. Rights and liabilities of assignees.
- 1989. — In general.
- 1990. — Transfers to purchasers of insured property.
- 1991. Transfer as collateral security.
- 1992. Priorities.
- 1993. Reassignments.
- 1994. Viatical settlements.
- 1995. Evidence.
- 1996. Questions of law or fact.

XIV. PREMIUMS.**(A) IN GENERAL.**

- 2000. In general.

(B) OBLIGATION TO PAY.

- 2001. In general.
- 2002. Attachment of risk.

(C) PERSONS LIABLE.

- 2003. In general.
- 2004. Named insureds.

(D) AMOUNTS PAYABLE.

- 2005. In general.
- 2006. Adjustment.
- 2007. — In general.
- 2008. — Additional premiums or surcharges.
- 2009. — Retrospective premiums.
- 2010. — Reduction.
 - (1). In general.
 - (2). Due to age.
 - (3). Due to profits or dividends.
- 2011. Conversion of group policies.
- 2012. Life insurance.
- 2013. Automobile insurance.

(E) PAYMENT.

- 2014. In general.
- 2015. Time for payment.
- 2016. — In general.
- 2017. — Notice.
- 2018. — Grace periods.
- 2019. — Computation.
- 2020. — Extensions of time periods.
- 2021. Persons paying.
- 2022. Persons to whom payments are made.
- 2023. — In general.
- 2024. — Agents or brokers.
- 2025. Method of payment; tender.
- 2026. — In general.
- 2027. — Payment by check, note, draft or order.
- 2028. — Application of dividends or credits.
- 2029. — Application of policy proceeds.
- 2030. — Remittance by mail.
- 2031. Group insurance.

(F) DEFAULT OR FAILURE TO PAY.

- 2032. In general.
- 2033. Rights of insureds upon default.
- 2034. Excuses for nonpayment in general.
- 2035. Estoppel and waiver.
- 2036. Ratification.
- 2037. Nonforfeiture benefits; continuing insurance or cash value.
- 2038. Lapse or termination of coverage.
- 2039. — In general.
- 2040. — Premium financing arrangements.
- 2041. Cancellation of coverage.
- 2042. — In general.
- 2043. — Mode of effecting cancellation in general.
- 2044. — Notice.
 - (1). In general.
 - (2). Notice to third persons.
- 2044.5. — Cancellation by or through premium financing organizations.
- 2045. — Operation and effect.
 - (1). In general.
 - (2). Effective date.
- 2046. — Repayment of unearned premiums.
 - (1). In general.
 - (2). Premium financing arrangements.

217. INSURANCE**XIV. PREMIUMS.(Cont'd)**

- 2047. — Actions.
 - (1). In general.
 - (2). Evidence.
 - (3). Questions of law or fact.
- 2048. — Waiver or ratification of defective cancellation.
- 2049. Reinstatement or revocation of cancellation.
- 2050. — In general.
- 2051. — Conditions in general.
- 2052. — Continued insurability; inducing reinstatement.
- 2053. — Application and procedure.
- 2054. — Payment and acceptance of premium; agreement.
- 2055. — Effect.
- 2056. — Time; coverage during lapse.
- 2057. Actions for premiums.
- 2058. — In general.
- 2059. — Pleading.
- 2060. — Evidence.
- 2061. — Questions of law or fact.

(G) REFUND OR RECOVERY OF PREMIUMS PAID.

- 2062. In general.
- 2063. Premiums paid during period of disability.
- 2064. Failure to issue or deliver policies.
- 2065. Mistake or fraud of insurer or agent.
- 2066. Invalid or void policies.
- 2067. Actions.
- 2068. — In general.
- 2069. — Evidence.
- 2070. — Questions of law or fact.

(H) PREMIUM FINANCING ARRANGEMENTS.

- 2072. In general.
- 2073. Agreements with premium finance agencies or companies.
- 2074. — In general.
- 2075. — Requisites and validity.
 - (1). In general.
 - (2). Disclosure of information.
 - (3). Additional premiums; renewals.
- 2076. — Construction; operation and effect.
- 2077. — Charges.

XIV. PREMIUMS.(Cont'd)

- 2078. — Payment of premiums to insurer or broker.

(I) ASSESSMENTS OR DUES.

- 2079. In general.
- 2080. Grounds for, or liability to, assessments.
- 2081. Amount of assessments.
- 2082. Levy, notice and payment.
- 2083. Refund or recovery of assessments paid.
- 2084. Actions.
- 2085. — In general.
- 2086. — Evidence.
- 2087. — Questions of law or fact.

XV. COVERAGE—IN GENERAL.

- 2090. In general.
- 2091. What is coverage.
- 2092. Duty to indemnify in general.
- 2093. Mandatory coverage.
- 2094. Commencement of coverage.
- 2095. Duration of coverage.
- 2096. Risks covered and exclusions.
- 2097. — In general.
- 2098. — Exclusions and limitations in general.
- 2099. — Property covered.
- 2100. — Persons covered.
- 2101. — Accident, occurrence, or event.
- 2102. — Willful, intentional or wrongful conduct.
- 2103. — Proximate cause.
 - (1). In general.
 - (2). Combined or concurrent causes.
- 2104. Extent of loss or liability in general.
- 2105. Amount of coverage; policy limits.
- 2106. Deductible amounts and co-payments.
- 2107. Other insurance.
- 2108. — In general.
- 2109. — What is other insurance.
- 2110. — Primary and excess insurance, in general.
- 2111.5. — Escape clauses.
- 2112. — Proration or allocation.
- 2113. Credits, deductions and offsets.
- 2114. Evidence.
- 2115. — In general.

217. INSURANCE**XV. COVERAGE—IN GENERAL.**(Cont'd)

- 2116. — Presumptions.
- 2117. — Burden of proof.
- 2118. — Admissibility.
- 2119. — Weight and sufficiency.
- 2120. Questions of law or fact.

XVI. COVERAGE—PROPERTY INSURANCE.**(A) IN GENERAL.**

- 2125. In general.
- 2126. Mandatory coverage.
- 2127. Commencement or trigger of coverage.
- 2128. Duration of coverage.
- 2129. Persons covered; ownership of property.
- 2130. Property covered or excluded.
- 2131. — In general.
- 2132. — Title, interest, possession or custody.
- 2133. — Use or occupancy of premises; vacancy.
- 2134. — Structures.
 - (1). In general.
 - (2). Buildings; construction.
 - (3). Appurtenances.
- 2135. — Fixtures.
- 2136. — Personal property.
 - (1). In general.
 - (2). Household goods or furniture.
 - (3). Merchandise or stock in trade.
 - (4). Tools, implements or equipment.
 - (5). Automobiles.
- 2137. — Place or location of property; territorial restrictions.
 - (1). In general.
 - (2). Change of location.
 - (3). Property in transit or storage.
- 2138. — Newly acquired property.
 - (1). In general.
 - (2). Notice.
- 2139. Risks or losses covered and exclusions.
- 2140. — In general.
- 2141. — Accident, occurrence or event.
- 2142. — Water damage.
 - (1). In general.
 - (2). Precipitation; hail.
 - (3). Freezing.
 - (4). Underground water in general.
 - (5). Surface water; flood exclusions.

XVI. COVERAGE—PROPERTY INSURANCE.(Cont'd)

- (6). Sewers and drains; plumbing.
- 2143. — Fire or smoke.
 - (1). In general.
 - (2). Friendly or hostile origin.
- 2144. — Movement of earth or structure.
 - (1). In general.
 - (2). Earthquakes.
 - (3). Subsidence.
- 2145. — Wind.
- 2146. — Corrosion or deterioration; mold or fungus.
- 2147. — Mechanical breakdown.
- 2148. — Pollution or contamination.
- 2149. — Power failure.
- 2150. — Collapse.
- 2151. — Explosion.
- 2152. — Disappearance.
- 2153. — Theft or burglary.
 - (1). In general.
 - (2). Forcible entry; visible marks.
 - (3). Voluntary parting with possession.
 - (4). Jewelry, antiques or similar items.
- 2154. — Vandalism.
- 2155. — Collision; vehicles.
 - (1). In general.
 - (2). Falling objects.
- 2156. — Faulty workmanship or materials.
- 2157. — Acts of government or governmental actors.
- 2158. — Ordinance or law.
- 2159. — War or civil commotion; riot.
- 2160. — Animals.
 - (1). In general.
 - (2). Damage caused by animals.
 - (3). Loss of, or injury to, animals.
- 2161. — Loss of collateral.
- 2162. — Loss of use in general; related expenses.
- 2163. — Business interruption; lost profits.
 - (1). In general.
 - (2). Loss of use.
 - (3). Loss of rent.
- 2164. — Inventories.
- 2165. — Proximate cause.
 - (1). In general.
 - (2). Combined or concurrent causes.

217. INSURANCE

**XVI. COVERAGE—PROPERTY
INSURANCE.(Cont'd)**

- 2166. — Acts of insureds or related entities.
 - (1). In general.
 - (2). Wrongful or intentional acts.
 - (3). Arson or incendiarism.
 - (4). Unintentional acts.
- 2167. Amount of insurance.
- 2168. — In general.
- 2169. — Scheduling; reporting clauses.
- 2170. — Deductible amounts; coinsurance.
- 2171. — Valued policies.
- 2172. — Replacement.
- 2173. Amount of damage or loss.
- 2174. — In general.
- 2175. — Actual total loss.
- 2176. — Constructive total loss.
- 2177. — Partial loss.
- 2178. — Loss of use in general.
- 2179. — Business interruption; lost profits.
 - (1). In general.
 - (2). Loss of use.
 - (3). Loss of rent.
- 2180. Valuation.
- 2181. — In general.
- 2182. — Real property.
- 2183. — Personal property.
- 2184. Repair or replacement.
- 2185. — In general.
- 2186. — Election to restore, repair or take property.
- 2187. Extent of interest insured.
- 2188. Other insurance.
- 2189. — In general.
- 2190. — What is other insurance.
- 2191. — Primary or excess insurance in general.
- 2192. — Escape clauses.
- 2193. — Proration or allocation.
- 2194. Credits, deductions and offsets.
- 2195. Minimizing loss.
- 2196. Evidence.
- 2197. — In general.
- 2198. — Presumptions.
- 2199. — Burden of proof.
- 2200. — Admissibility.

**XVI. COVERAGE—PROPERTY
INSURANCE.(Cont'd)**

- 2201. — Weight and sufficiency.
- 2202. Questions of law or fact.
- (B) CROP INSURANCE.**
- 2203. In general.
- 2204. Risks or losses.
- 2205. Amounts payable.
- 2206. Government reinsurance.
- 2207. Evidence.
- 2208. Questions of law or fact.
- (C) FLOOD INSURANCE.**
- 2209. In general.
- 2210. Risks or losses.
- 2211. Amounts payable; other insurance.
- 2212. Evidence.
- 2213. Questions of law and fact.
- (D) OCEAN MARINE INSURANCE.**
- 2214. In general.
- 2215. Property covered.
- 2216. — In general.
- 2217. — Property in transit; cargo.
- 2218. Risks covered and exclusions.
- 2219. — In general.
- 2220. — Perils of the sea.
 - (1). In general.
 - (2). Stranding.
- 2221. — Perils of rivers, lakes and inland waters.
- 2222. — Fire.
- 2223. — War and civil commotion; riot.
- 2224. — Theft.
- 2225. — Arrest, restraint and detention.
- 2226. — Barratry.
- 2227. — Collision.
- 2228. — Inherent causes.
- 2229. — Unseaworthiness.
- 2230. — Proximate cause.
- 2231. — Negligence.
- 2232. — Wrongful acts.
- 2233. Losses and amounts payable.
- 2234. — In general.
- 2235. — Actual total loss.
- 2236. — Constructive total loss.
- 2237. — Abandonment.
- 2238. — Partial loss in general.

217. INSURANCE**XVI. COVERAGE—PROPERTY
INSURANCE.(Cont'd)**

- 2239. — Valuation.
- 2240. — General average contribution.
- 2241. — Particular average or partial loss.
- 2242. — Duties of owners, masters or crew after loss.
- 2243. — Salvage.
- 2244. — Repair.
- 2245. — Expenditures.
 - (1). In general.
 - (2). Sue and labor clauses.
- 2246. — Loss of use or income.
- 2247. — Other insurance.
 - (1). In general.
 - (2). What is other insurance.
 - (3). — In general.
 - (4). — Types.
 - (5). — Validity or enforceability.
 - (6). Proration or allocation.
- 2248. — Deductible amounts.
- 2249. — Credits, deductions and offsets.
- 2250. Evidence.
- 2251. — In general.
- 2252. — Presumptions.
- 2253. — Burden of proof.
- 2254. — Admissibility.
- 2255. — Weight and sufficiency.
- 2256. Questions of law or fact.

XVII. COVERAGE—LIABILITY INSURANCE.**(A) IN GENERAL.**

- 2260. In general.
- 2261. Public policy limitations in general.
- 2262. Mandatory coverage.
- 2263. Commencement and duration of coverage.
- 2264. — In general.
- 2265. — Continuous acts and injuries; trigger.
- 2266. — Claims made policies.
- 2267. Insurer's duty to indemnify in general.
- 2268. — In general.
- 2269. — Insured's liability for damages.
- 2270. — Defense costs, supplementary payments and related expenses.
 - (1). In general.
 - (2). Pre-tender expenses.
- 2271. — Accrual; conditions precedent.

**XVII. COVERAGE—LIABILITY
INSURANCE.(Cont'd)**

- 2272. Persons covered.
- 2273. Risks and losses.
- 2274. — In general.
- 2275. — Accident, occurrence or event.
- 2276. — Bodily injury.
- 2277. — Property damage.
- 2278. — Common exclusions.
 - (1). In general.
 - (2). Intentional acts or injuries; crimes and abuse.
 - (3). — In general.
 - (4). — Criminal acts.
 - (5). — Assault and battery.
 - (6). — Sexual acts or abuse.
 - (7). Punitive damages.
 - (8). Contractual liabilities.
 - (9). Business pursuits.
 - (10). Professional services.
 - (11). Employment related exclusions.
 - (12). Workers' compensation.
 - (13). Vehicles and related equipment.
 - (14). Aircraft and aviation.
 - (15). Watercraft.
 - (16). Intoxicants.
 - (17). Pollution.
 - (18). War or nuclear incidents.
 - (19). Premises and operations hazards.
 - (20). Products and completed operations hazards.
 - (21). — In general.
 - (24). — Product recalls; sistership.
 - (25). Property of insured.
 - (26). — In general.
 - (27). — Owned property.
 - (28). — Alienated property.
 - (29). — Personal property in care, custody or control.
- 2279. Amounts payable.
- 2280. — In general.
- 2281. — Limits of liability.
 - (1). In general.
 - (2). Several injuries.
 - (3). Attorney fees and costs; interest.
- 2282. — Deductibles.
- 2283. — Self-insured retentions.
- 2284. — Severability.
- 2285. — Other insurance.

217. INSURANCE

**XVII. COVERAGE—LIABILITY
INSURANCE.(Cont'd)**

- (1). In general.
- (2). Primary and excess insurance.
- (3). Proration and allocation.
- (4). — In general.
- (5). — By policy limits.
- (6). — Contribution by equal shares.
- (7). — Maximum loss; amounts otherwise payable.
- (8). Escape clauses.
- 2286. — Credits, deductions and offsets.
- 2287. Evidence.
- 2288. — In general.
- 2289. — Presumptions.
- 2290. — Burden of proof.
- 2291. — Admissibility.
- 2292. — Weight and sufficiency.
- 2293. Questions of law or fact.

(B) COVERAGE FOR PARTICULAR LIABILITIES.

- 2294. In general.
- 2295. Premises and operations hazards.
- 2296. Products and completed operations hazards.
- 2297. Advertising injury.
- 2298. — In general.
- 2299. — Defamation or disparagement.
- 2300. — Violation of privacy rights.
- 2301. — Misappropriation.
- 2302. — Infringement.
- 2303. — Particular exclusions.
 - (1). In general.
 - (2). Known falsity.
 - (3). Prior publication.
 - (4). Media-related business.
- 2304. — Evidence.
- 2305. — Questions of law or fact.
- 2306. Personal injury.
- 2307. — In general.
- 2308. — False arrest, detention or imprisonment.
- 2309. — Malicious prosecution.
- 2310. — Wrongful entry or eviction.
- 2311. — Defamation or disparagement.
- 2312. — Violation of privacy rights.
- 2313. — Particular exclusions.
 - (1). In general.

**XVII. COVERAGE—LIABILITY
INSURANCE.(Cont'd)**

- (2). Known falsity.
- (3). Prior publication.
- 2314. — Evidence.
- 2315. — Questions of law or fact.
- 2316. Contractually assumed liabilities.
- 2317. Employers' liabilities.
- 2318. — In general.
- 2319. — Scope of coverage.
- 2320. — Particular exclusions.
- 2321. — Evidence.
- 2322. — Questions of law or fact.
- 2323. Environmental liabilities; pollution.
- 2324. — In general.
- 2325. — Scope of coverage.
- 2326. — Particular exclusions.
- 2327. — Evidence.
- 2328. — Questions of law or fact.
- 2329. Airport, aircraft and aviation liabilities.
- 2330. — In general.
- 2331. — Scope of coverage.
- 2332. — Particular exclusions.
- 2333. — Evidence.
- 2334. — Questions of law or fact.
- 2335. Bar and restaurant owners' liabilities; intoxicants.
- 2336. — In general.
- 2337. — Scope of coverage.
- 2338. — Particular exclusions.
- 2339. — Evidence.
- 2340. — Questions of law or fact.
- 2341. Farm and ranch liabilities.
- 2342. — In general.
- 2343. — Scope of coverage.
- 2344. — Particular exclusions.
- 2345. — Evidence.
- 2346. — Questions of law or fact.
- 2347. Governmental liabilities.
- 2348. — In general.
- 2349. — Scope of coverage.
- 2350. — Particular exclusions.
 - (1). In general.
 - (2). Law enforcement activities.
- 2351. — Evidence.
- 2352. — Questions of law or fact.
- 2353. Homeowners' liabilities.
- 2354. — In general.
- 2355. — Scope of coverage.

217. INSURANCE**XVII. COVERAGE—LIABILITY
INSURANCE.(Cont'd)**

- 2356. — Particular exclusions.
- 2357. — Evidence.
- 2358. — Questions of law or fact.
- 2359. Manufacturers' or contractors' liabilities.
- 2360. — In general.
- 2361. — Scope of coverage.
- 2362. — Particular exclusions.
- 2363. — Evidence.
- 2364. — Questions of law or fact.
- 2365. Ocean marine liabilities.
- 2366. — In general.
- 2367. — Scope of coverage.
- 2368. — Particular exclusions.
- 2369. — Evidence.
- 2370. — Questions of law or fact.
- 2371. Owners', landlords' and tenants' liabilities.
- 2372. — In general.
- 2373. — Scope of coverage.
- 2374. — Particular exclusions.
- 2375. — Evidence.
- 2376. — Questions of law or fact.
- 2377. Directors' and officers' liabilities.
- 2378. — In general.
- 2379. — Scope of coverage.
- 2380. — Particular exclusions.
 - (1). In general.
 - (2). Regulatory exclusions.
 - (3). Disputes among insureds.
- 2381. — Evidence.
- 2382. — Questions of law or fact.
- 2383. Errors and omissions liabilities.
- 2384. — In general.
- 2385. — Scope of coverage.
- 2386. — Particular exclusions.
- 2387. — Evidence.
- 2388. — Questions of law or fact.
- 2389. Professional malpractice liabilities.
- 2390. — In general.
- 2391. — Particular professions.
 - (1). In general.
 - (2). Law.
 - (3). Medicine and health.
 - (4). — In general.
 - (5). — Mental health care.
 - (6). Accountancy.

**XVII. COVERAGE—LIABILITY
INSURANCE.(Cont'd)**

- (7). Architects and engineers.
- 2392. — Evidence.
- 2393. — Questions of law or fact.
- 2394. Excess and umbrella liability coverage.
- 2395. — In general.
- 2396. — Scope of coverage.
- 2397. — Particular exclusions.
- 2398. — Evidence.
- 2399. — Questions of law or fact.

**XVIII. COVERAGE—FIDELITY AND
GUARANTY INSURANCE.**

- 2400. In general.
- 2401. Commencement and duration of coverage in general.
- 2402. Discovery or knowledge of loss.
- 2403. Persons covered.
- 2404. Risks covered and exclusions.
- 2405. — In general.
- 2406. — Employee fraud or dishonesty.
 - (1). In general.
 - (2). Who are employees.
 - (3). Nature of acts covered; intent.
 - (5). Loss to insured; causation.
 - (6). Benefit to employees or others.
- 2407. Amounts payable.
- 2408. Indemnification for costs and fees.
- 2409. Other insurance.
- 2410. — In general.
- 2411. — Proration or allocation.
- 2412. Evidence.
- 2413. Questions of law or fact.

XIX. COVERAGE—LIFE INSURANCE.

- 2420. In general.
- 2421. Persons covered.
- 2422. Groups covered.
- 2423. Mandatory coverage.
- 2424. Commencement of coverage.
- 2425. Duration of coverage.
- 2426. Time of death.
- 2427. Cause of death in general.
- 2428. Preexisting conditions.
- 2429. Particular risks and exceptions.
- 2430. — In general.
- 2431. — Military service; war.
- 2432. — Travel and conveyances.

217. INSURANCE

XIX. COVERAGE—LIFE INSURANCE.(Cont'd)

- (1). In general.
- (2). Aviation.
- 2433. — Violation of law; capital punishment.
- 2434. — Suicide.
 - (1). In general.
 - (2). Mental condition.
- 2435. — Voluntary or unnecessary exposure to danger.
 - (1). In general.
 - (2). Drugs or intoxicants.
 - (3). Sexual activities.
 - (4). Fighting, rioting or similar behavior.
- 2436. — Acts of third persons.
 - (1). In general.
 - (2). Participation or provocation by insured.
- 2437. — Other matters.
- 2438. Accelerated or living benefits.
- 2439. Measure or amount of recovery.
- 2440. Amount of paid-up policy.
- 2441. Share in tontine fund.
- 2442. Credits, deductions and offsets.
- 2443. Election between rights.
- 2444. Other insurance.
- 2445. Evidence.
- 2446. Questions of law or fact.

XX. COVERAGE—HEALTH AND ACCIDENT INSURANCE.**(A) IN GENERAL.**

- 2450. In general.

(B) MEDICAL INSURANCE.

- 2451. In general.
- 2452. Mandatory coverage.
- 2453. Government sponsored insurance.
- 2454. Commencement of coverage.
- 2455. Duration of coverage.
- 2456. — In general.
- 2457. — Group insurance.
 - (1). In general.
 - (2). Termination of employment in general.
 - (3). Disability.
 - (4). Notice.
- 2458. Persons covered.

XX. COVERAGE—HEALTH AND ACCIDENT INSURANCE.(Cont'd)

- 2459. — In general.
- 2460. — Group insurance.
- 2461. Illness, sickness or accident in general.
- 2462. Self-inflicted injuries.
- 2463. Employment-related conditions.
- 2464. Diseases or conditions covered or excluded.
- 2465. — In general.
- 2466. — Pregnancy or childbirth.
 - (1). In general.
 - (2). Infertility.
- 2467. — Cancer or tumors.
- 2468. — Heart or circulatory disorders.
- 2469. — Diabetes and other metabolic disorders.
- 2470. — Immune system disorders (HIV and AIDS).
- 2471. — Mental or emotional disorders.
 - (1). In general.
 - (2). Drug or narcotic addiction or abuse.
 - (3). Alcoholism.
- 2472. — Teeth, mouth or jaw conditions.
- 2473. — Vision or hearing.
- 2474. Preexisting conditions.
- 2475. — In general.
- 2476. — Diagnosis.
- 2477. — Heart or circulatory disorders.
- 2478. — Cancer or tumors.
- 2479. — Mental or emotional disorders.
- 2480. Medical necessity.
- 2481. — In general.
- 2482. — Determination.
- 2483. Treatments or services covered.
- 2484. — In general.
- 2485. — Experimental or investigational treatments or procedures.
- 2486. — Preventative or diagnostic measures.
 - (1). In general.
 - (2). Mammograms or pap smears.
 - (3). Child wellness measures.
 - (4). — In general.
 - (5). — Screening tests.
 - (6). — Immunizations.
- 2487. — Surgical procedures.
 - (1). In general.

217. INSURANCE**XX. COVERAGE—HEALTH AND ACCIDENT
INSURANCE.(Cont'd)**

- (2). Cosmetic or reconstructive procedures.
- (3). Organ or tissue transplants.
- 2488. — Kidney dialysis.
- 2489. — Family planning services.
 - (1). In general.
 - (2). Measures to overcome infertility.
 - (3). Sterilization.
 - (4). Abortion.
- 2490. — Mental or emotional disorder treatments.
 - (1). In general.
 - (2). Drug or narcotic addiction.
 - (3). Alcoholism.
- 2491. — Rehabilitative treatment.
- 2492. — Ambulance or other transportation services.
- 2493. Settings for care; service organizations.
- 2493.1. — In general.
- 2494. — In-patient hospital treatment.
 - (1). In general.
 - (2). Mental or emotional disorders.
- 2495. — Out-patient treatment.
 - (1). In general.
 - (2). Free-standing surgical facilities.
- 2496. — Emergency room treatment.
- 2497. — Skilled nursing or extended care facilities.
- 2498. — Nursing homes or convalescent facilities.
- 2499. — Hospices.
- 2500. — Home health care; alternative long-term care.
- 2501. — Provider networks or other managed care organizations.
- 2502. Types of practitioners rendering services.
- 2503. — In general.
- 2504. — Medical doctors.
- 2505. — Osteopaths.
- 2506. — Naturopaths.
- 2507. — Chiropractors.
- 2508. — Nurses.
- 2509. — Psychotherapists, psychologists or social workers.
- 2510. Drugs and medicines.
- 2511. — In general.
- 2512. — Experimental drugs or uses.

**XX. COVERAGE—HEALTH AND ACCIDENT
INSURANCE.(Cont'd)**

- 2513. — Non-prescription medicines.
- 2514. Medical devices or structures.
- 2515. — In general.
- 2516. — Transportation equipment.
- 2517. — Wheelchairs.
- 2518. — Homes.
 - (1). In general.
 - (2). Furniture.
 - (3). Fixtures.
- 2519. Non-contractual benefits.
- 2520. Amounts payable.
- 2521. — In general.
- 2522. — Policy limits; restoration of benefits.
- 2523. — Deductible amounts and co-payments.
- 2524. — Reasonable and customary charges.
- 2525. — Other insurance or benefits; coordination.
 - (1). In general.
 - (2). Proration or allocation.
- 2526. — Credits, deductions and offsets.
- 2527. Evidence.
- 2528. — In general.
- 2529. — Presumptions.
- 2530. — Burden of proof.
- 2531. — Admissibility.
- 2532. — Weight and sufficiency.
- 2533. Questions of law or fact.

(C) DISABILITY INSURANCE.

- 2534. In general.
- 2535. Mandatory coverage.
- 2536. Commencement of coverage.
- 2537. Duration of coverage.
- 2538. Persons covered.
- 2539. Preexisting conditions.
- 2540. Risks covered and exclusions.
- 2541. — In general.
- 2542. — Travel and conveyances.
 - (1). In general.
 - (2). Aviation.
- 2543. — Occupation or employment.
- 2544. — Diseases or conditions.
 - (1). In general.
 - (2). Heart conditions.

217. INSURANCE

XX. COVERAGE—HEALTH AND ACCIDENT INSURANCE.(Cont'd)

- (3). Mental conditions; substance abuse.
- 2545. — External, violent or accidental causes.
 - (1). In general.
 - (2). What constitutes accident.
 - (3). Time of disability relative to accident.
 - (4). — In general.
 - (5). — Process of nature.
- 2546. — External or visible signs of injury.
- 2547. — Poison.
- 2548. — Gas.
- 2549. — Voluntary or unnecessary exposure to danger.
- 2550. — Violation of law in general.
- 2551. — Injuries caused by insured.
 - (1). In general.
 - (2). Negligence.
 - (3). Intentional or self-inflicted injuries.
 - (4). Injuries resulting from intoxication or substance abuse.
- 2552. — Injuries inflicted by others.
 - (1). In general.
 - (2). Assaults and batteries.
 - (3). Provocation.
- 2553. Nature or degree of disability.
- 2554. — In general.
- 2555. — Confinement to home or bed.
- 2556. — Care of physician.
- 2557. — Partial disability in general.
- 2558. — Particular or scheduled disabilities.
 - (1). In general.
 - (2). Impairment of sight or hearing.
 - (3). Injury to, or loss of, limbs.
 - (4). Mental or emotional disorders.
- 2559. — Immediate disability.
- 2560. — Period of disability.
 - (1). In general.
 - (2). Permanent or continuous disability.
- 2561. — Total disability.
 - (1). In general.
 - (2). Regular, customary or ordinary occupation.

XX. COVERAGE—HEALTH AND ACCIDENT INSURANCE.(Cont'd)

- (3). Substantial or material performance.
- (4). Comparable employment or occupation.
- (5). Ability to engage in any occupation.
- 2562. — Cure or recovery.
- 2563. Remediation of disability.
- 2564. — In general.
- 2565. — Submission to treatment.
- 2566. Waiting periods.
- 2567. Amounts payable.
- 2568. — In general.
- 2569. — Duration of benefit period.
- 2570. — Other insurance.
- 2571. — Credits, deductions and offsets.
- 2572. — Election between rights.
- 2573. Evidence.
- 2574. — In general.
- 2575. — Presumptions.
- 2576. — Burden of proof.
- 2577. — Admissibility.
- 2578. — Weight and sufficiency.
- 2579. Questions of law or fact.

(D) ACCIDENT INSURANCE.

- 2580. In general.
- 2581. Mandatory coverage.
- 2582. Commencement of coverage.
- 2583. Duration of coverage.
- 2584. Persons covered.
- 2585. Risks covered or excluded.
- 2586. — In general.
- 2587. — Military service; war.
- 2588. — Travel and conveyances.
 - (1). In general.
 - (2). Automobiles.
 - (3). Aviation.
- 2589. — Diseases or conditions; medical treatment.
 - (1). In general.
 - (2). Heart conditions.
 - (3). Mental conditions; chemical dependency.
- 2590. — External, violent or accidental causes.
 - (1). In general.

217. INSURANCE**XX. COVERAGE—HEALTH AND ACCIDENT INSURANCE.(Cont'd)**

- (2). What constitutes accident.
- (3). Time of disability or death relative to accident.
- (4). — In general.
- (5). — Process of nature.
- 2591. — External or visible signs of injury.
- 2592. — Voluntary or unnecessary exposure to danger.
- 2593. — Violation of law in general.
- 2594. — Injuries caused by insured.
 - (1). In general.
 - (2). Intentional or self-inflicted injuries.
 - (3). Negligence.
 - (5). Suicide.
- 2594.5. — Intoxication and substance abuse; overdose.
- 2595. — Injuries inflicted by others.
 - (1). In general.
 - (2). Assaults and batteries.
 - (3). Provocation.
- 2596. — Sexual activities.
- 2597. Amounts payable.
- 2598. — In general.
- 2599. — Double or increased indemnity.
- 2600. — Other insurance.
 - (1). In general.
 - (2). Proration or allocation.
- 2601. — Credits, deductions and offsets.
- 2602. Evidence.
- 2603. — In general.
- 2604. — Presumptions.
- 2605. — Burden of proof.
- 2606. — Admissibility.
- 2607. — Weight and sufficiency.
- 2608. Questions of law or fact.

XXI. COVERAGE—TITLE INSURANCE.

- 2610. In general.
- 2611. Mandatory coverage.
- 2612. Commencement of coverage.
- 2613. Duration of coverage.
- 2614. Property covered.
- 2615. Title defects.
- 2616. — In general.
- 2617. — Marketable title in general.

XXI. COVERAGE—TITLE INSURANCE.(Cont'd)

- 2618. — Prior ownership; persons in possession.
- 2619. — Liens and encumbrances in general.
- 2620. — Mortgages.
- 2621. — Mechanics' liens.
- 2622. — Tax liens.
- 2623. — Lis pendens.
- 2624. — Judgments and judgment liens.
- 2625. — Zoning or other land use restrictions.
- 2626. — Easements.
- 2627. — Encroachments.
- 2628. — Recording errors.
- 2629. — Defects created by, or known to, insured.
- 2630. Closing or settlement protection.
- 2631. Insurers' duties upon discovery of defect.
- 2632. — In general.
- 2633. — Removal.
- 2634. Amounts payable.
- 2635. — In general.
- 2636. — Amount of insurance; policy limits.
- 2637. — Amount of damage.
 - (1). In general.
 - (2). Easements.
 - (3). Judgments.
 - (4). Mortgages.
- 2638. — Other insurance.
- 2639. Evidence.
- 2640. Questions of law or fact.

XXII. COVERAGE—AUTOMOBILE INSURANCE.**(A) IN GENERAL.**

- 2645. In general.
- 2646. Mandatory coverage.
- 2647. Commencement of coverage.
- 2648. Duration of coverage.
- 2649. Risks and exclusions in general.
- 2650. Territorial and premises restrictions; nonresidents.
- 2651. Automobiles covered.
- 2652. — In general.
- 2653. — Nature of automobile.

217. INSURANCE

**XXII. COVERAGE—AUTOMOBILE
INSURANCE.**(Cont'd)

- 2654. — Automobiles not in policy in general.
- 2655. — Newly acquired automobiles.
 - (1). In general.
 - (2). Notice to insurer.
- 2656. — Nonowned automobiles in general.
- 2657. — Regular or frequent use.
- 2658. — Substitute automobiles.
- 2659. — Hired automobiles.
- 2660. Persons covered.
- 2660.5. — In general.
- 2661. — Family members; household.
- 2662. Permission.
 - (1). In general.
 - (2). Implied permission in general.
 - (3). Reasonable belief.
 - (4). Person giving permission; second-hand permission.
- 2667. — Deviation from permissive use.
- 2668. Occupancy of vehicle.
- 2669. — In general.
- 2670. — Uninsured or underinsured motorist coverage.
- 2671. — No-fault coverage.
- 2672. Nature and cause of injury or damage.
- 2673. — In general.
- 2674. — Accident in general.
- 2675. — Willful, intentional, or illegal acts.
- 2676. Ownership, maintenance, operation, or use.
 - (1). In general.
 - (2). Liability coverage.
- 2679. — Uninsured or underinsured motorist coverage.
- 2680. — No-fault coverage.
- 2681. Loading or unloading.
- 2682. Purpose and manner of use.
 - (1). In general.
 - (2). Business use in general.
 - (3). Renting vehicle.
 - (4). Carrying passengers for consideration.
- 2687. — Towing trailer.
- 2688. Extent of loss or liability in general.
- 2689. Evidence.
- 2690. — In general.

**XXII. COVERAGE—AUTOMOBILE
INSURANCE.**(Cont'd)

- 2691. — Presumptions.
 - 2692. — Burden of proof.
 - 2693. — Admissibility.
 - 2694. — Weight and sufficiency.
 - 2695. Questions of law or fact.
- (B) PROPERTY COVERAGE.**
- 2696. In general.
 - 2697. Mandatory coverage.
 - 2698. Property covered or excluded.
 - 2699. — In general.
 - 2700. — Trailers.
 - 2701. — Property in or on vehicle.
 - 2702. Risks and losses covered or excluded.
 - 2703. — In general.
 - 2704. — Collision.
 - 2705. — Missiles or falling objects.
 - 2706. — Theft, burglary, or false pretenses.
 - (1). In general.
 - (2). Forcible entry; visible marks.
 - (3). Voluntary parting with possession.
 - 2707. — Weather damage; water.
 - 2708. — Fire.
 - 2709. — Vandalism or malicious mischief.
 - 2710. — Racing, contests, or stunts.
 - 2711. — Proximate cause; concurrent causes.
 - 2712. — Loss of use.
 - (1). In general.
 - (2). Transportation expenses.
 - (3). Lost profits.
 - 2713. Amount of insurance.
 - 2714. — In general.
 - 2715. — Policy limits.
 - 2716. — Deductible amounts.
 - 2717. Amounts payable; extent of damage or loss.
 - (1). In general.
 - (2). Repair or replacement.
 - 2720. — Valuation.
 - 2721. — Loss of use.
 - 2722. — Expenditures.
 - 2723. Extent of interest insured.
 - 2724. Other insurance.

217. INSURANCE**XXII. COVERAGE—AUTOMOBILE
INSURANCE.(Cont'd)**

- 2725. Credits, deductions, and offsets.
- 2726. Minimizing loss.
- 2727. Evidence.
- 2728. — In general.
- 2729. — Presumptions.
- 2730. — Burden of proof.
- 2731. — Admissibility.
- 2732. — Weight and sufficiency.
- 2733. Questions of law or fact.

(C) LIABILITY COVERAGE.

- 2734. In general.
- 2735. Mandatory coverage.
- 2736. — In general.
- 2737. — Financial responsibility requirements.
- 2738. Insurer's duty to indemnify in general.
- 2739. — In general.
- 2740. — Insured's liability for damages.
- 2741. — Defense costs, supplementary payments, and related expenses.
 - (1). In general.
 - (2). Pre-tender expenses.
- 2742. Risks, losses, and exclusions in general.
- 2743. Persons injured.
- 2744. — In general.
- 2745. — Insured persons.
- 2747. — Family members; household.
- 2748. — Employees.
 - (1). In general.
 - (2). Fellow employees.
- 2749. — Guests or occupants.
- 2750. Property damaged.
- 2751. — In general.
- 2752. — Property owned by, rented to, or in charge of, insured.
- 2753. Punitive damages.
- 2754. Amount of coverage.
- 2755. — In general.
- 2756. — Limits of liability.
 - (1). In general.
 - (2). Out of state.
 - (3). Several injuries.
 - (4). Attorney fees and costs; interest.
- 2757. — Deductible amounts.
- 2758. Amounts payable in general.
- 2759. Other insurance.

**XXII. COVERAGE—AUTOMOBILE
INSURANCE.(Cont'd)**

- 2760. — In general.
- 2761. — Primary and excess insurance.
- 2762. — Proration and allocation.
 - (1). In general.
 - (2). By policy limits.
 - (3). Contribution by equal shares.
 - (4). Maximum loss; amounts otherwise payable.
- 2763. — Escape clauses.
- 2764. Credits, deductions, and offsets.
- 2765. Evidence.
- 2766. — In general.
- 2767. — Presumptions.
- 2768. — Burden of proof.
- 2769. — Admissibility.
- 2770. — Weight and sufficiency.
- 2771. Questions of law or fact.

**(D) UNINSURED OR UNDERINSURED
MOTORIST COVERAGE.**

- 2772. In general.
- 2773. Mandatory coverage.
- 2774. — In general.
- 2775. — Mandatory offering in general.
- 2776. — Self-insurers.
- 2777. — Public agencies.
- 2778. — Acceptance or rejection.
- 2779. — Effect of failure to offer, inadequate offer, or inadequate rejection.
 - (1). In general.
 - (2). Amount of coverage.
- 2780. Risks, losses and exclusions in general.
- 2781. Necessity of tort liability.
- 2782. — In general.
- 2783. — Need to file suit.
- 2784. — Physical contact requirement.
- 2785. Uninsured motorists or vehicles.
- 2786. — In general.
- 2787. — Underinsurance; exhausted coverage.
- 2788. — Effect of insurer's insolvency.
- 2789. Determination of tort liability; actions and settlements.
- 2790. — In general.
- 2791. — Notice of tort action.
- 2792. — Insurer's consent to tort action.
- 2793. — Settlement of tort actions.
 - (1). In general.

217. INSURANCE

**XXII. COVERAGE—AUTOMOBILE
INSURANCE.**(Cont'd)

- (2). Insurer's consent to settlement.
- (3). Settlement for less than policy limits.
- 2794. Amount of coverage.
- 2795. — In general.
- 2796. — Policy limits.
- 2797. Other insurance.
- 2798. — In general.
- 2799. — "Stacking".
- 2800. — Primary and excess insurance in general.
- 2801. — Proration and allocation.
- 2802. — Escape clauses.
- 2803. Amounts payable in general.
- 2804. Credits, deductions, and offsets.
- 2805. — In general.
- 2806. — Recovery under other insurance.
- 2807. — Workers' compensation.
- 2808. — Unemployment compensation.
- 2809. — Social security; welfare benefits.
- 2810. Evidence.
- 2811. — In general.
- 2812. — Presumptions.
- 2813. — Burden of proof.
- 2814. — Admissibility.
- 2815. — Weight and sufficiency.
 - (1). In general.
 - (3). Physical contact and unknown vehicles in general.
 - (4). Corroboration; independent or disinterested witness.
- 2816. Questions of law or fact.
- (E) NO-FAULT COVERAGE; MEDICAL PAYMENTS.**
- 2817. In general.
- 2818. Mandatory coverage.
- 2819. — In general.
- 2820. — Mandatory offering in general.
- 2821. — Self-insurers.
- 2822. — Public agencies.
- 2823. — Acceptance or rejection.
- 2824. — Effect of failure to offer, inadequate offer, or inadequate rejection.
 - (1). In general.
 - (2). Amount of coverage.
- 2825. — Effect on claimant of claimant's failure to obtain coverage.

**XXII. COVERAGE—AUTOMOBILE
INSURANCE.**(Cont'd)

- 2826. Risks and exclusions in general.
- 2827. Losses covered.
- 2828. — In general.
- 2829. — Loss of work, income, or profits.
- 2830. — Survivors' benefits; loss of services.
- 2831. — Health care expenses or services provided.
 - (1). In general.
 - (2). Mental or emotional injury.
 - (3). Rehabilitation.
 - (4). Lapse in treatment.
- 2832. — Funeral expenses.
- 2833. — Other expenditures.
- 2834. Amount of coverage.
- 2835. — In general.
- 2836. — Policy limits.
- 2837. Amounts payable in general.
- 2838. Other insurance.
- 2839. — In general.
- 2840. — "Stacking".
- 2841. — Primary and excess insurance.
- 2842. — Proration and allocation.
- 2843. — Escape clauses.
- 2844. Credits, deductions, and offsets.
- 2845. — In general.
- 2846. — Recovery under other insurance.
- 2847. — Workers' compensation.
- 2848. — Unemployment compensation.
- 2849. — Social security; welfare benefits.
- 2850. Evidence.
- 2851. — In general.
- 2852. — Presumptions.
- 2853. — Burden of proof.
- 2854. — Admissibility.
- 2855. — Weight and sufficiency.
- 2856. Questions of law or fact.
- (F) GARAGE OR AUTOMOBILE SERVICE LIABILITY.**
- 2857. In general.
- 2858. Mandatory coverage.
- 2859. Risks, losses, and exclusions in general.
- 2860. Premises covered.
- 2861. Vehicles covered.
- 2862. — In general.
- 2863. — Vehicle leased to customer or others.

217. INSURANCE**XXII. COVERAGE—AUTOMOBILE
INSURANCE.(Cont'd)**

- 2864. Persons covered.
- 2865. — In general.
- 2866. — Customers.
- 2867. Operations and uses covered.
- 2868. Persons injured.
- 2869. — In general.
- 2870. — Employees.
- 2871. Property damaged.
- 2872. — In general.
- 2873. — Property in custody.
- 2874. Amount of insurance.
- 2875. — In general.
- 2876. — Policy limits.
 - (1). In general.
 - (2). Out of state.
- 2877. Amounts payable in general.
- 2878. Other insurance.
- 2879. Credits, deductions, and offsets.
- 2880. Evidence.
- 2881. — In general.
- 2882. — Presumptions.
- 2883. — Burden of proof.
- 2884. — Admissibility.
- 2885. — Weight and sufficiency.
- 2886. Questions of law or fact.

(G) TRUCKERS' AND MOTOR CARRIERS' LIABILITY.

- 2887. In general.
- 2888. Mandatory coverage.
- 2889. Risks, losses, and exclusions in general.
- 2890. Vehicles covered.
- 2891. Persons covered.
- 2892. Operations and uses covered.
- 2893. — In general.
- 2894. — Business restrictions.
- 2895. Persons or property injured or damaged.
- 2896. Amount of insurance.
- 2897. — In general.
- 2898. — Policy limits.
 - (1). In general.
 - (2). Out of state.
- 2899. Amounts payable in general.
- 2900. Other insurance.
- 2901. Credits, deductions, and offsets.
- 2902. Evidence.
- 2903. — In general.

**XXII. COVERAGE—AUTOMOBILE
INSURANCE.(Cont'd)**

- 2904. — Presumptions.
- 2905. — Burden of proof.
- 2906. — Admissibility.
- 2907. — Weight and sufficiency.
- 2908. Questions of law or fact.

XXIII. DUTY TO DEFEND.

- 2911. In general; nature and source of duty.
- 2912. Determination of duty.
- 2913. — In general; standard.
- 2914. — Pleadings.
- 2915. — Matters beyond pleadings.
- 2916. Commencement of duty; conditions precedent.
- 2917. — In general.
- 2918. — Claim, suit, or demand for damages.
- 2919. — Tender or other notice.
- 2920. Scope of duty.
- 2921. — In general.
- 2922. — Several grounds or causes of action.
 - (1). In general.
 - (2). Allocation.
- 2923. — Effect of other insurance.
- 2924. — Postjudgment relief.
- 2925. Fulfillment of duty and conduct of defense.
- 2926. — In general.
- 2927. — Insurer's options in general.
- 2928. — Right to control defense.
- 2929. — Conflicts of interest; independent counsel.
- 2930. Termination of duty; withdrawal.
- 2931. Bad faith.
- 2932. Effect of breach.
- 2933. — In general.
- 2934. — Amounts recoverable from insurer.
 - (1). In general.
 - (2). Underlying defense costs.
 - (3). Underlying judgment; other losses.
 - (4). Bad faith; punitive damages.
- 2935. Title insurance.
- 2936. Evidence.
- 2937. — In general.

217. INSURANCE

XXIII. DUTY TO DEFEND.(Cont'd)

- 2938. — Presumptions.
- 2939. — Burden of proof.
- 2940. — Admissibility.
- 2941. — Weight and sufficiency.
- 2942. Questions of law or fact.

XXIV. AVOIDANCE.

(A) IN GENERAL.

- 2950. In general.
- 2951. Grounds for avoidance in general.
- 2952. Fraud or false swearing in general.
- 2953. Representations.
- 2954. — In general.
- 2955. — Nature and effect in general.
- 2956. — Construction in general.
- 2957. — Falsity.
- 2958. — Materiality.
- 2959. — Knowledge or intent.
- 2960. — Reliance.
- 2961. Concealment or failure to disclose.
- 2962. — In general.
- 2963. — Nature and effect in general.
- 2964. — Materiality.
- 2965. — Knowledge or intent.
- 2966. — Reliance.
- 2967. Warranties.
- 2968. — In general.
- 2969. — Distinguished from representations.
- 2970. — Effect of breach.
- 2971. Conditions precedent.
- 2972. — In general.
- 2973. — Effect of insured's breach.
- 2974. Parties affected by avoidance.
- 2975. Return or tender of premiums.
- 2976. Evidence.
- 2977. — In general; admissibility.
- 2978. — Presumptions.
- 2979. — Burden of proof.
- 2980. — Weight and sufficiency.
- 2981. Attaching or supplying application.
- 2982. — In general.
- 2983. — As essential to avoidance.
- 2984. — As affecting admission of evidence.
- 2985. Questions of law or fact.

(B) PARTICULAR KINDS OF INSURANCE.

- 2986. In general.
- 2987. Property or title insurance.
- 2988. — In general.
- 2989. — Condition, location, or use of building or realty.
- 2990. — Description or condition of goods.
- 2991. — Amount or value.
- 2992. — Title or interest of insured.
 - (1). In general.
 - (2). Sole or unconditional ownership.
- 2993. — Encumbrances.
- 2994. — Solvency and financial condition.
- 2995. Ocean marine insurance.
- 2996. — In general.
- 2997. — Seaworthiness of vessel.
- 2998. Liability insurance.
- 2999. Fidelity and guaranty insurance.
- 3000. Life, health, and disability insurance.
- 3001. — In general.
- 3002. — Age.
- 3003. — Health and physical condition.
 - (1). In general.
 - (2). Representations and warranties distinguished.
 - (3). Knowledge and intent in general.
 - (4). Materiality in general.
 - (5). Reliance.
 - (6). — In general.
 - (7). — Effect of medical examination or lack thereof.
 - (8). Good or sound health.
 - (9). Serious, minor, or temporary conditions.
 - (10). Medical attendance or consultation.
 - (11). Particular diseases or conditions.
- 3004. Accident insurance.
- 3005. Automobile insurance.
- 3006. — In general.
- 3006.1. — Traffic violations and accidents.
- 3009. — Compulsory insurance and financial responsibility requirements, effect of.
- 3010. Evidence.
- 3011. — In general.
- 3012. — Presumptions.
- 3013. — Burden of proof.

217. INSURANCE**XXIV. AVOIDANCE.**(Cont'd)

- 3014. — Admissibility.
- 3015. — Weight and sufficiency.
- 3016. Questions of law or fact.

(C) SPECIAL CIRCUMSTANCES AFFECTING RISK.

- 3017. In general.
- 3018. Occupation.
- 3019. Habits.
- 3020. Interest and relationship of insured or beneficiary.
- 3021. Prior insurance claims or losses.
- 3022. Other insurance.
- 3023. — In general.
- 3024. — Application, rejection or cancellation.
- 3025. Evidence.
- 3026. Questions of law or fact.

XXV. FORFEITURE.**(A) IN GENERAL.**

- 3034. In general.
- 3035. Continuing or promissory representations.
- 3036. Continuing or promissory warranties.
- 3037. Conditions subsequent.
- 3038. — In general.
- 3039. — Effect of breach.
- 3040. Parties affected by forfeiture.
- 3041. Notice and proceedings to give effect to forfeiture in general.
- 3042. Return or tender of premiums.
- 3043. Obtaining additional insurance.
- 3044. Evidence.
- 3045. Questions of law or fact.

(B) PARTICULAR KINDS OF INSURANCE.

- 3046. In general.
- 3047. Property and title insurance.
- 3048. — In general.
- 3049. — Buildings.
 - (1). In general.
 - (2). Change in condition.
 - (3). Mode of use.
 - (4). Change in occupancy in general.
 - (5). Vacancy.
- 3050. — Personal property.
 - (1). In general.
 - (2). Change in value.

XXV. FORFEITURE.(Cont'd)

- (3). Change of location; removal.
- (4). Change of possession or use.
- 3051. — Change of title or interest.
- 3052. — Encumbrances and liens.
- 3053. — Precautions against loss in general.
- 3054. — Keeping books, papers, and safe.
 - (1). In general.
 - (2). Inventory.
- 3055. — Increase of risk or hazard.
 - (1). In general.
 - (2). "Moral hazard".
 - (3). Insured's control or knowledge.
- 3056. Ocean marine insurance.
- 3057. — In general.
- 3058. — Seaworthiness.
- 3059. — Use, voyage, and navigation of vessel.
- 3060. Liability insurance.
- 3061. Aviation insurance.
- 3062. — In general.
- 3063. — Airworthiness.
- 3064. — Qualifications or certification of pilot.
 - (1). In general.
 - (2). Medical certificate.
- 3065. Life, health, and accident insurance.
- 3066. Automobile insurance.
- 3067. Evidence.
- 3068. — In general.
- 3069. — Presumptions.
- 3070. — Burden of proof.
- 3071. — Admissibility.
- 3072. — Weight and sufficiency.
- 3073. Questions of law or fact.

XXVI. ESTOPPEL AND WAIVER OF INSURER'S DEFENSES.

Judicial estoppel, see ESTOPPEL ¶68.

- 3080. In general.
- 3081. Matters as to which assertable.
- 3082. Persons entitled to assert or benefit from.
- 3083. Effect in general.
- 3084. Powers and authority of officers and agents in general.
- 3085. Express waiver.
- 3086. Estoppel or implied waiver in general.

217. INSURANCE

XXVI. ESTOPPEL AND WAIVER OF INSURER'S DEFENSES.(Cont'd)

- 3087. Reliance or prejudice, necessity of.
- 3088. Knowledge or notice of facts in general.
- 3089. — In general; effect.
- 3090. — Duty to investigate.
- 3091. — Officers or agents; imputed knowledge.
- 3092. Statements of officers and agents in general.
- 3093. Acts and conduct of insurer or agents in general.
- 3094. Fault, collusion or fraud of agent.
- 3095. — In general.
- 3096. — Insertion of false statements; omissions.
 - (1). In general.
 - (2). Life, health and accident insurance.
- 3097. Issuance and delivery of policy.
- 3098. — In general.
- 3099. — Failure to deliver.
- 3100. — Issuing policy without inquiry or objection.
 - (1). In general; renewals.
 - (2). Failure to investigate in general.
 - (3). Life, health and accident insurance.
- 3101. Acts or omissions after issuing policy in general.
- 3102. — In general.
- 3103. — Failure to investigate.
- 3104. — Failure to make objection or assert forfeiture in general.
- 3105. Claims process and settlement.
- 3106. — In general.
- 3107. — Requiring, accepting, or retaining proofs of loss.
- 3108. — Investigation, examination, or inquiry.
- 3109. — Admission of liability on policy.
- 3110. — Denial or disclaimer of liability on policy.
 - (1). In general.
 - (2). Failure, delay, or inadequacy.
 - (3). Assertion of other ground of forfeiture or defense.
- 3111. — Defense of action against insured.
 - (1). In general.

XXVI. ESTOPPEL AND WAIVER OF INSURER'S DEFENSES.(Cont'd)

- (2). Defense without reservation of rights.
- (3). Refusal, or breach of duty, to defend.
- 3112. — Adjustment, appraisal, or arbitration.
- 3113. — Promise to pay.
- 3114. — Payment of loss.
- 3115. Matters relating to premiums.
- 3116. — In general.
- 3117. — Demand, acceptance, or retention.
- 3118. — Custom or course of dealing.
- 3119. Consent to assignment of policy.
- 3120. Nonwaiver agreements and reservation of rights.
- 3121. Policy provisions against forfeiture; incontestable clause.
- 3122. — In general.
- 3123. — Validity in general.
- 3124. — Ocean marine insurance; "held covered" clause.
- 3125. — Life, health, and accident insurance.
- 3126. Evidence.
- 3127. — In general.
- 3128. — Presumptions.
- 3129. — Burden of proof.
- 3130. — Admissibility.
- 3131. — Weight and sufficiency.
- 3132. Questions of law or fact.

XXVII. CLAIMS AND SETTLEMENT PRACTICES.**(A) IN GENERAL.**

- 3140. In general.

(B) CLAIM PROCEDURES.**1. IN GENERAL.**

- 3141. In general.

2. NOTICE AND PROOF OF LOSS.

- 3142. In general.
- 3143. Necessity.
- 3144. — In general.
- 3145. — Of notice.
- 3146. — Of proof of loss.

217. INSURANCE**XXVII. CLAIMS AND SETTLEMENT
PRACTICES.(Cont'd)**

- 3147. — Compliance as condition precedent.
- 3148. Persons giving notice or proof.
- 3149. — In general.
- 3150. — Persons injured by insured.
- 3151. Persons receiving notice or proof.
- 3152. Timeliness.
- 3153. — In general.
- 3154. — “Immediately” or “forthwith”.
- 3155. — “As soon as practicable”.
- 3156. — Reasonable time.
- 3157. Excuses for delay or failure.
- 3158. — In general.
- 3159. — Disability or incompetency.
- 3160. — Beliefs or knowledge.
 - (1). In general.
 - (2). As to facts or claim.
 - (3). As to liability.
 - (4). As to policy or coverage.
- 3161. Contents and sufficiency in general.
- 3162. — In general.
- 3163. — Of notice.
- 3164. — Of proof of loss.
- 3165. — Oral or written.
- 3166. Effect of noncompliance with requirements.
- 3167. — In general.
- 3168. — Prejudice to insurer.
- 3169. — Effect on third parties.
- 3170. Forwarding demands and papers; summons and pleadings.
- 3171. Examination of insured or others.
- 3172. Inspection of property.
- 3173. Documents, records and information in general.
- 3174. Medical information.
- 3175. — In general.
- 3176. — Medical reports.
- 3177. — Medical examinations.
- 3178. — Autopsies.
- 3179. Verification.
- 3180. Defects and amendments.
- 3181. Fraud or false swearing.
- 3182. — In general.
- 3183. — Misstatements, omissions or concealment in general.
- 3184. — Knowledge or intent.

**XXVII. CLAIMS AND SETTLEMENT
PRACTICES.(Cont'd)**

- 3185. — Materiality.
 - 3186. — Reliance, prejudice or injury.
 - 3187. Insurer’s waiver or estoppel.
 - 3188. — In general.
 - 3189. — Powers of officers and agents.
 - (1). In general.
 - (2). Powers of adjusters.
 - 3190. — Express waiver.
 - 3191. — Implied waiver or estoppel.
 - (1). In general.
 - (2). Statements and acts of officers and agents in general.
 - (3). Requiring proofs as waiver of notice.
 - (4). Failure to furnish blanks or forms.
 - (5). Failure to make sufficient demand.
 - (6). Recognition of liability.
 - (7). Denial of liability.
 - (8). Failure to object or to state grounds of objection.
 - (9). — In general; delay.
 - (10). — Necessity of specific objection.
 - (11). — Specifying ground of objection as waiver of other grounds.
 - (12). Investigation and adjustment; settlement negotiations.
 - (13). Payment of loss.
 - 3192. — Nonwaiver agreement or reservation of rights.
 - 3193. Evidence.
 - 3194. — In general.
 - 3195. — Presumptions.
 - 3196. — Burden of proof.
 - 3197. — Admissibility.
 - 3198. — Weight and sufficiency.
 - (1). In general.
 - (2). Estoppel or waiver.
 - 3199. Questions of law or fact.
 - 3200. — In general.
 - 3201. — Estoppel or waiver.
- 3. COOPERATION.**
- 3202. In general.
 - 3203. What constitutes cooperation; failure to cooperate.

217. INSURANCE**XXVII. CLAIMS AND SETTLEMENT PRACTICES.(Cont'd)**

- 3204. — In general.
- 3205. — Materiality in general.
- 3206. — Providing information in general.
- 3207. — False or inconsistent statements; variant testimony.
- 3208. — Unavailability; absence from trial or other proceedings.
- 3209. — Settlement with third parties; collusion.
- 3210. Effect of failure to cooperate.
- 3211. — In general.
- 3212. — Prejudice to insurer.
- 3213. — Effect on third parties.
- 3214. Insurer's waiver or estoppel.
- 3215. Evidence.
- 3216. — In general.
- 3217. — Presumptions.
- 3218. — Burden of proof.
- 3219. — Admissibility.
- 3220. — Weight and sufficiency.
- 3221. Questions of law or fact.

4. ADJUSTERS.

- 3222. In general.
- 3223. License or registration; discipline.
- 3224. — In general.
- 3225. — Fees.
- 3226. — Violations and penalties.
- 3227. Agreements with principals.
- 3228. Compensation.
- 3229. Service of process.
- 3230. Notice requirements.
- 3231. Claims administration by.
- 3232. — In general.
- 3233. — Payment.
- 3234. — Adjustment or settlement.
- 3235. Premiums.
- 3236. Fiduciary accounts.
- 3237. Books and records.
- 3238. — In general.
- 3239. — Confidentiality.
- 3240. — Examination.
- 3241. Reporting requirements.
- 3242. Liability.
- 3243. Bond.

5. THIRD-PARTY ADMINISTRATORS.

- 3244. In general.
- 3245. Payment.
- 3246. Adjustment or settlement.

6. APPRAISAL.

- 3247. In general.
- 3248. Contracts.
- 3249. — In general.
- 3250. — Validity.
- 3251. — Subjects and scope of appraisal.
- 3252. Compelling appraisal.
- 3253. — In general.
- 3254. — Demand.
- 3255. Waiver or loss of appraisal rights; estoppel.
- 3256. Appraisers.
- 3257. Proceedings on appraisal.
- 3258. — In general.
- 3259. — Evidence.
- 3260. Award.
- 3261. — In general.
- 3262. — Effect; conclusiveness.
- 3263. Review.
- 3264. Failure of appraisal.

7. ARBITRATION.

- 3265. In general.
- 3266. Contractual or consensual basis.
- 3267. Arbitration favored; public policy.
- 3268. Matters subject to arbitration.
- 3269. Compulsory arbitration.
- 3270. Waiver or estoppel.
- 3271. Agreements to arbitrate.
- 3272. — In general.
- 3273. — Requisites and validity.
- 3274. — Modification or termination.
- 3275. — Construction in general.
- 3276. — Liberal or strict construction.
- 3277. — Disputes and matters arbitrable.
- 3278. Submission.
- 3279. Performance or breach of agreement.
- 3280. Enforcement of agreement or right.
- 3281. — In general.
- 3282. — Remedies in general.
- 3283. — Stay of arbitration.
- 3284. — Stay of proceedings pending arbitration.
- 3285. — Demand or notice.

217. INSURANCE**XXVII. CLAIMS AND SETTLEMENT PRACTICES.(Cont'd)**

- 3286. — Jurisdiction.
- 3287. — Pleading.
- 3288. — Evidence.
- 3289. — Trial.
- 3290. — Questions of law or fact.
- 3291. — Judgment or order.
- 3292. — Review.
- 3293. Failure to arbitrate.
- 3294. Arbitrators.
- 3295. — In general.
- 3296. — Appointment.
- 3297. — Authority.
- 3298. — Compensation.
- 3299. — Liabilities.
- 3300. Arbitration proceedings.
- 3301. — In general.
- 3302. — Evidence.
- 3303. — Hearing.
- 3304. — Objections and exceptions; waivers.
- 3305. Award.
- 3306. — In general.
- 3307. — Costs.
- 3308. — Validity of award, in general.
- 3309. — Making and formal requisites.
- 3310. — Consistency and reasonableness.
- 3311. — Excessive or inadequate award.
- 3312. — Mistake of law.
- 3313. — Mistake of fact; miscalculation.
- 3314. — Partiality.
- 3315. — Fraud or misconduct.
- 3316. — Subjects and scope of determination, in general.
- 3317. — Uninsured motorist coverage.
- 3318. — No-fault coverage.
- 3319. — Ratification.
- 3320. — Objections or exceptions, and waiver thereof.
- 3321. — Amended or supplemental awards.
- 3322. — Reconsideration.
- 3323. — Confirmation.
- 3324. — Effect of award.
 - (1). In general.
 - (2). Persons affected.
 - (3). Conclusiveness.
- 3325. Non-judicial review; appeals board.

XXVII. CLAIMS AND SETTLEMENT PRACTICES.(Cont'd)

- 3326. Judicial review.
- 3327. — In general.
- 3328. — Decisions reviewable.
- 3329. — Right of review; persons entitled to review.
- 3330. — Grounds.
 - (1). In general.
 - (2). Limited to statutory grounds.
 - (3). Presentation and reservation of grounds.
- 3331. — Proceedings for review.
 - (1). In general.
 - (2). Hearing and determination in general.
 - (3). Scope of inquiry.
 - (4). Trial de novo.
 - (5). Evidence.
 - (6). — In general.
 - (7). — Presumptions.
 - (8). — Burden of proof.
 - (9). — Admissibility.
 - (10). — Weight and sufficiency.
- 3332. Enforcement of award.

8. MEDIATION.

- 3333. In general.

(C) SETTLEMENT DUTIES; BAD FAITH.

Deceptive practices, see also ANTITRUST AND TRADE REGULATION.

- 3334. In general.
- 3335. — In general.
- 3336. — Reasonableness of insurer's conduct in general.
- 3337. — Absence of coverage; coverage disputes in general.
- 3338. — Negligence and bad faith distinguished.
- 3339. — Insured's conduct as defense.
- 3340. — Complaint procedures.
- 3341. Prerequisites for claim of breach or bad faith.
- 3342. — In general.
- 3343. — Notice, proof, and demand by insured.
- 3344. — Insurer's refusal as condition for recovery.
- 3346. Settlement by liability insurer.

217. INSURANCE

XXVII. CLAIMS AND SETTLEMENT PRACTICES.(Cont'd)

- 3347. — In general.
- 3348. — Insurer's right to settle.
- 3349. — Insurer's settlement duties in general.
- 3350. — Duty to settle within or pay policy limits.
- 3351. — Payment of fewer than all claims.
- 3352. — Claim by excess insurer.
- 3353. — Investigations and inspections.
- 3354. — Fraud or misrepresentation.
- 3355. — Communications and explanations.
- 3356. — Duty to, and effect on, non-parties in general.
- 3357. — Persons entitled to recover; companies and persons liable.
- 3358. Settlement by first-party insurer.
- 3359. — In general.
- 3360. — Duty to settle or pay.
- 3361. — Investigations and inspections.
- 3362. — Fraud or misrepresentation.
- 3363. — Communications and explanations.
- 3364. — Duty to, and effect on, non-parties in general.
- 3365. — Persons entitled to recover; companies and persons liable.
- 3366. Settlement by insured; insured's release of tort-feasor.
- 3367. — In general.
- 3368. — Bad faith.
- 3369. — Impairment of insurer's subrogation rights.
 - (1). In general.
 - (2). As barring insured's recovery under policy.
- 3370. — Notice to or consent of liability insurer.
- 3371. — Liability insurer's failure to defend or indemnify.
- 3372. — Duty to, and effect on, non-parties.
- 3373. Amount and items recoverable.
Emotional distress damages, see DAMAGES ¶57.46.
- 3374. — In general.
- 3375. — Attorney fees.
- 3376. — Punitive or multiple damages.
- 3378. Actions.

XXVII. CLAIMS AND SETTLEMENT PRACTICES.(Cont'd)

- 3379. — In general.
- 3380. — Time to sue and limitations.
- 3381. — Evidence.
 - (1). In general.
 - (2). Presumptions.
 - (3). Burden of proof.
 - (4). Admissibility.
 - (5). Weight and sufficiency.
- 3382. — Questions of law or fact.

(D) REQUISITES AND VALIDITY OF SETTLEMENT OR RELEASE.

- 3383. In general.
- 3384. Consideration.
- 3386. Ratification.
- 3387. Public policy considerations.
- 3388. Fraud or mistake.
- 3389. Actions.

(E) CONSTRUCTION AND EFFECT OF SETTLEMENT OR RELEASE.

- 3390. In general.
- 3391. What constitutes settlement or release.
- 3392. Allocation of settlement amounts.

(F) PAYMENT OF PROCEEDS.

- 3393. In general.
- 3394. Place of payment.
- 3395. Time of payment.
- 3396. Interest.
Prejudgment interest, see INTEREST ¶39(2.35).
- 3397. Mode and sufficiency of payment.
- 3398. — In general.
- 3399. — Foreign or domestic currency.
- 3400. — Payment by check or draft.
 - (1). In general.
 - (2). Joint check or draft.
- 3401. — Lump sum or installments.
- 3402. — Settlement options and supplementary contracts.
- 3403. — Loan receipts and similar transactions.
- 3404. Effect of payment.
- 3405. — In general.
- 3406. — Payment as discharge of insurer.
- 3407. Evidence.
- 3408. Questions of law or fact.

217. INSURANCE**XXVIII. MISCELLANEOUS DUTIES
AND LIABILITIES.***Deceptive practices, see also ANTITRUST AND
TRADE REGULATION.*

- 3415. In general.
- 3416. Of insurers.
- 3417. — In general.
- 3418. — Negligence in general.
- 3419. — Bad faith in general.
- 3420. — Investigations and inspections.
- 3421. — Policy and coverage recommendations.
- 3422. — Failure to issue policy; delay.
- 3423. — Cancellation or rescission of policy; failure to renew.
- 3424. — Fraud or misrepresentation; concealment.
- 3425. Of insureds.
- 3426. Actions in general; evidence.
- 3427. Questions of law or fact.

XXIX. PERSONS ENTITLED TO PROCEEDS.**(A) IN GENERAL.**

- 3433. In general.
- 3434. Status of claimant in general.
- 3435. — In general.
- 3436. — Third-party beneficiary.
- 3437. Ownership of policy.
- 3438. Beneficiaries in general.
- 3439. Creditors in general.
- 3440. Wrongful conduct of insured or beneficiary in general.
- 3441. Assignment of claim or right to sue.

*Assignment of bad faith claim or other extra-contractual claim, see ASSIGNMENTS; assignment of policies, see INSURANCE XIII(S).***(B) PROPERTY INSURANCE.**

- 3442. In general.
- 3443. Bailments, leases, and trusts.
- 3444. Sales and transfers.
- 3445. Divided or multiple ownership; husband and wife.
- 3446. Creditors and holders of liens in general.
- 3447. Mortgagees and deed of trust beneficiaries in general.
- 3448. Policy provisions affecting rights.
- 3449. — In general.
- 3450. — Open mortgage or loss payable clause.

**XXIX. PERSONS ENTITLED TO
PROCEEDS.(Cont'd)**

- 3451. — Standard or union mortgage clause.
- 3452. Other agreements affecting rights.
- 3453. — In general.
- 3454. — Mortgagor's covenant to insure.

(C) LIABILITY INSURANCE.

- 3455. In general.
- 3456. Rights of injured person against insurer.
- 3457. — In general.
- 3458. — As affected by insured's rights.
 - (1). In general.
 - (2). Defenses in general.
 - (3). Personal defenses.
- 3459. — Multiple claims; priorities and settlements.

**(D) UNINSURED OR UNDERINSURED
MOTORIST COVERAGE.**

- 3460. In general.

(E) NO-FAULT INSURANCE.

- 3461. In general.

(F) LIFE, HEALTH AND ACCIDENT INSURANCE.

- 3462. In general.
- 3463. Named beneficiaries, in general.
- 3464. Who may be beneficiary.
- 3465. Mode and sufficiency of designation.
- 3466. Group insurance.
- 3467. Effect of omitted or ineffective designation of beneficiary in general.
- 3468. Relative or person equitably entitled; facility of payment clause.
- 3469. Beneficiary's interest as vested or expectant.
- 3470. — In general.
- 3471. — Time of vesting.
- 3472. Change of beneficiary, in general.
- 3473. — In general.
- 3474. — Right to change; consent.
- 3475. — Mode and sufficiency.
 - (1). In general.
 - (2). Compliance with policy, in general.
 - (3). Substantial or strict compliance.

217. INSURANCE

XXIX. PERSONS ENTITLED TO PROCEEDS.(Cont'd)

- (4). Doing everything within power to effectuate change.
- (5). Request or notice and presentation of policy or certificate.
- (6). Endorsement on policy or certificate.
- (7). Wills.
- (8). Waiver and estoppel as to defects.
- 3476. — Validity of assent to change.
 - (1). In general.
 - (2). Incapacity, misrepresentations, and undue influence.
- 3477. — Effect of change; revocation and successive changes.
- 3478. Spouses, parents and children.
- 3479. — In general.
- 3480. — Children out-of-wedlock; adoption; stepchildren.
- 3481. — Divorce or separation; agreements and settlements.
See also, DIVORCE §252.3(4).
 - (1). In general.
 - (2). Effect on prior designation of beneficiary.
 - (3). Effect on right to change beneficiary.
- 3482. Surrender of policy and issuance of new policy.
- 3483. Disqualification of beneficiary, in general.
- 3484. Death of insured caused by beneficiary; slayer's rule.
- 3485. Death of beneficiary.
- 3486. Policy procured with money wrongfully obtained.
- 3487. Rights of creditors.
- 3488. — In general.
- 3489. — Cash value and dividends.
- 3490. Persons paying premiums; policy loans.

(G) EVIDENCE; QUESTIONS OF LAW OR FACT.

- 3491. In general.
- 3492. Presumptions.
- 3493. Burden of proof.
- 3494. Admissibility.
- 3495. Weight and sufficiency.
- 3496. — In general.

XXIX. PERSONS ENTITLED TO PROCEEDS.(Cont'd)

- 3497. — Change of beneficiary.
- 3498. Questions of law or fact.

XXX. RECOVERY OF PAYMENTS BY INSURER.

- 3500. In general.
- 3501. Reimbursement of payments.
- 3502. — In general.
- 3503. — Reimbursement from insured.
 - (1). In general.
 - (2). Grounds and prerequisites.
 - (3). — In general.
 - (4). — Impairment of subrogation rights.
- 3504. — Reimbursement from third parties, in general.
- 3505. — Reimbursement from other insurers, in general.
- 3506. — Liability insurance.
 - (1). In general.
 - (2). Defense costs.
- 3507. — Uninsured or underinsured motorist or no-fault insurance.
 - (1). In general.
 - (2). Liens.
- 3508. — Actions.
- 3509. Reimbursement and subrogation distinguished.
- 3510. Subrogation against insured; "anti-subrogation rule".
- 3511. Subrogation against third parties; right to proceeds of action or settlement.
- 3512. — In general.
- 3513. — Theories of subrogation; definitions and distinctions.
 - (1). In general.
 - (2). Subrogation by operation of law, in general.
 - (3). Equitable subrogation.
 - (4). Conventional or contractual subrogation.
- 3514. — Payment to insured or injured person.
 - (1). In general.
 - (2). Adequate compensation of insured; "made whole" doctrine.
 - (3). Voluntary payment.
- 3515. — Property and title insurance.

217. INSURANCE

XXX. RECOVERY OF PAYMENTS
BY INSURER.(Cont'd)

- (1). In general.
- (2). Mortgagee's or lienholder's rights, subrogation to.
- 3516. — Ocean marine insurance.
- 3517. — Liability, fidelity and guaranty insurance.
- 3518. — Life insurance.
- 3519. — Health and accident insurance.
 - (1). In general.
 - (2). Medical insurance.
- 3520. — Uninsured or underinsured motorist coverage.
- 3521. — No-fault insurance.
- 3522. — Waiver or loss of subrogation rights.
- 3523. — Subrogation as derivative right.
 - (1). In general; rights or "shoes" of insured.
 - (2). Defenses against insured affecting insurer.
 - (3). — In general.
 - (4). — Release or settlement with insured.
- 3524. — Loan receipts and similar transactions.
- 3525. — Assignment of rights of insured.
- 3526. — Actions involving subrogation.
 - (1). In general.
 - (2). Time to sue and limitations.
 - (3). Laches.
 - (4). Persons entitled to sue, and parties.
 - (5). — In general.
 - (6). — Real party in interest.
 - (7). — Partial payment and subrogation.
 - (8). — Effect of agreement, assignment, or policy provisions.
 - (9). Pleading.
 - (10). Evidence.
 - (11). Questions of law or fact.
- 3527. — Amount of recovery and relief granted, in general.
- 3528. — Attorney fees and costs.
- 3529. Contribution among insurers.
- 3530. — In general.
- 3531. — Primary and excess insurers.
- 3532. — Actions.

XXXI. CIVIL PRACTICE AND PROCEDURE.

- 3540. In general.
- 3541. Nature and form of remedy.
- 3542. Direct action by injured person, in general.
- 3543. Grounds of action.
- 3544. Conditions precedent.
- 3545. — In general.
- 3546. — Notice and proof of loss.
- 3547. — Submission to appraisal or arbitration.
- 3548. — Uninsured or underinsured motorist coverage.
- 3549. — Liability or indemnity insurance.
 - (1). In general.
 - (2). Judgment or settlement agreement.
 - (3). — In general.
 - (4). — "No action" clause.
 - (5). — Effect of appeal.
 - (6). Issuance or return of execution; unsatisfied judgment.
 - (7). Notice.
- 3550. Demand.
- 3551. Bond or other security.
- 3552. — In general.
- 3553. — Foreign companies.
- 3554. Defenses in general.
- 3555. Conclusiveness and effect of prior adjudication.
- 3556. — In general.
- 3557. — Particular matters concluded.
- 3558. Jurisdiction.

Personal jurisdiction over nonresidents, or "long-arm" jurisdiction, see COURTS ¶13.1, FEDERAL COURTS X.
- 3559. Venue.
- 3560. Statutes of limitations.

See also, LIMITATION OF ACTIONS.
- 3561. Contractual time limitations.
- 3562. — In general.
- 3563. — Time before action can be brought.
- 3564. — Time within which action must be brought.
 - (1). In general.
 - (2). Validity of provisions.
 - (3). — In general.
 - (4). — Period shorter than statute.
 - (5). Computation.

217. INSURANCE**XXXI. CIVIL PRACTICE AND
PROCEDURE.(Cont'd)**

- (6). — In general.
- (7). — Accrual.
- (8). — Tolling.
- (9). Circumstances excusing compliance.
- (10). Government entities.
- 3565. — Estoppel and waiver.
 - (1). In general.
 - (2). Powers of officers or agents.
 - (3). Particular conduct.
 - (4). Denial of liability.
- 3566. Laches.
- 3567. Parties.
- 3568. Process.
- 3569. — In general.
- 3570. — Against foreign companies.
 - (1). In general.
 - (2). Service on commissioner or other official.
- 3571. Pleading.
- 3572. Evidence.
- 3573. — In general.
- 3574. — Presumptions.
- 3575. — Burden of proof.
- 3576. — Admissibility.
- 3577. — Weight and sufficiency.
- 3578. Questions of law or fact.
- 3579. Instructions.
- 3580. Verdict and findings.
- 3582. Judgment.
- 3584. Costs and attorney fees.
- 3585. — In general.
- 3586. — Appeals.

XXXII. REINSURANCE.

- 3590. In general.
- 3591. Nature of reinsurance.
- 3592. — In general.
- 3593. — Definitions.
- 3594. Power and right to reinsure risk.
- 3595. — In general.
- 3596. — Mandatory reinsurance.
- 3597. Intermediaries and agents.
- 3598. — In general.
- 3599. — Licensing.
- 3600. — Authority.
- 3601. — Records and reports.

XXXII. REINSURANCE.(Cont'd)

- 3602. — Contracts.
 - (1). In general.
 - (2). Breaches.
- 3603. — Miscellaneous duties and liabilities.
- 3604. Contract and policy.
- 3605. — In general.
- 3606. — Formation.
- 3607. — Construction in general.
- 3608. — Relations between parties; implied terms.
 - (1). In general.
 - (2). Good faith.
- 3609. — Modification and reformation.
- 3610. — Cancellation, surrender or rescission.
- 3611. — Transfers.
 - (1). In general.
 - (2). Assumption and bulk insurance transfers.
- 3612. Premiums.
- 3613. Coverage.
- 3614. — In general.
- 3615. — Following fortunes, form, and settlement.
- 3616. — Amount of recovery.
- 3617. Avoidance and forfeiture.
- 3618. — In general.
- 3619. — Misrepresentation.
- 3620. — Concealment.
- 3621. Estoppel and waiver of defenses.
- 3622. Claims and settlement practices.
- 3623. — In general.
- 3624. — Claim procedures.
- 3625. — Settlements by reinsurer.
- 3626. — Alternative dispute resolution.
- 3627. Miscellaneous duties and liabilities.
- 3628. Rights of original insured or others.
- 3629. — In general.
- 3630. — As third-party beneficiary.
- 3631. Effect of reinsured's insolvency.
- 3632. Actions.
- 3633. — In general.
- 3634. — Evidence.
- 3635. — Questions of law or fact.

XXXIII. OFFENSES AND PROSECUTIONS.

- 3640. In general.

217. INSURANCE**XXXIII. OFFENSES AND PROSECUTIONS.(Cont'd)**

3642. Insurance companies and related entities.
3643. Surplus lines insurers.
3644. Financial impairment.
3645. Privacy.
3646. Agents and agency.
3647. Contracts and policies.
3648. Premiums.
3649. Property insurance.
3650. Liability insurance.
3651. Life insurance.
3652. Health and accident insurance.
3653. Title insurance.
3654. Automobile insurance.
3655. Sales, marketing and advertising practices.
3656. Actions and proceedings.

218. INSURRECTION AND SEDITION**SUBJECTS INCLUDED**

- Criminal anarchy, sabotage, syndicalism and other similar seditious acts of an individual or of individuals having a political end in view
- Rising of a number of persons against civil authority for the purpose of preventing by force the execution of the law, or of forcibly overthrowing the government, and raising or attempting to raise seditious commotions for such purposes, although without open violence
- Nature and elements of the crimes of insurrection, sedition, revolt, rebellion, etc.
- Nature and extent of criminal responsibility therefor, and grounds of defense
- Status of insurgents, and protection and enforcement of rights in insurrectionary districts
- Proceedings for suppression of insurrection by civil authority
- Prosecution and punishment of acts of insurrection, revolt, or rebellion, not constituting

treason, and of seditious acts and practices, as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Conspiracies, seditious and treasonable, see CONSPIRACY
- Military power, suppression of insurrection by, see WAR AND NATIONAL EMERGENCY
- Mutiny against military or naval authority or authority of commander of merchant vessel, see ARMED SERVICES, MILITARY JUSTICE, SEAMEN
- Rioting in general, see RIOT
- States in insurrection or rebellion, and seceded states, see STATES
- Subversive groups, protection against as defense measure, and other measures and acts in exercise of war powers, see WAR AND NATIONAL EMERGENCY
1. Nature and existence in general.
 2. Offenses and prosecutions.
 3. Civil status of insurgents and persons within insurrectionary districts.
 4. Protection and enforcement of rights within insurrectionary districts.
 5. Suppression of insurrection by civil authority.

219. INTEREST**SUBJECTS INCLUDED**

- Compensation for use, forbearance, or detention of money
- Rights and liabilities in respect thereof in general
- Rate fixed by parties or allowed by law
- Mode of computation

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Damages, interest as element of, see DAMAGES

219. INTEREST

Particular classes of liabilities, interest on, see EMINENT DOMAIN and other specific topics

Persons acting in fiduciary or other special relations, rights and liabilities of, see EXECUTORS AND ADMINISTRATORS, GUARDIAN AND WARD, PRINCIPAL AND AGENT, TRUSTS, and other specific topics

Unlawful rate, see USURY

I. RIGHTS AND LIABILITIES IN GENERAL, ¶1-26.

II. RATE, ¶27-38.

III. TIME AND COMPUTATION, ¶39-60.

IV. RECOVERY, ¶61-68.

I. RIGHTS AND LIABILITIES IN GENERAL.

1. Nature and grounds in general.
2. What law governs.
3. Constitutional and statutory provisions.
4. Contracts for interest.
5. — In general.
6. — Express contracts.
7. — Implied contracts.
8. Compensation for use of money.
9. — In general.
10. — Loans and advances.
11. — Money received for use of another.
12. — Money wrongfully obtained, held, or used.
13. Default in payment in general.
14. Unreasonable or vexatious delay in payment.
15. Written instruments.
16. Installments of principal.
17. Coupons and installments of interest.
18. Accounts.
 - (1). In general.
 - (2). Open or unliquidated accounts.
 - (3). Settled or stated accounts.
19. Demands not liquidated.
 - (1). In general.
 - (2). Amount readily ascertainable by computation.
 - (3). Principal in dispute.
20. Funds in litigation or in custody of the law.
21. Verdicts, findings, and awards.
22. Judgments.

I. RIGHTS AND LIABILITIES IN GENERAL.(Cont'd)

- (1). In general.
- (2). Compound interest.
- (3). Judgments of federal courts.
- (4). Foreign judgments.
- (5). Judgments silent as to interest.
- (6). Judgments sounding in damages.
- (7). Judgments against persons in fiduciary capacities.
- (8). Judgments on fines and bonds.
- (9). Judgments for fees and costs.
23. Time when interest accrues.
24. Interest in advance.
25. Apportionment.
26. Waiver.

II. RATE.

27. Power to regulate.
28. What law governs.
29. Constitutional and statutory provisions.
30. Changes in statutory rate.
 - (1). In general.
 - (2). Effect on contracts fixing rate.
 - (3). Effect on judgments.
31. Computation of rate in general.
32. Stipulations as to rate.
 - 32.1. — In general.
33. — Power to contract.
34. — Requisites and validity.
35. — Statement as to rate in contract.
36. — Construction and operation.
 - (1). In general.
 - (2). Effect of subsequent contract as to rate.
37. After maturity of debt.
 - (1). In general.
 - (2). Contract as to rate after maturity.
38. On judgments.
 - (1). In general.
 - (2). Judgments founded on contract fixing rate.

III. TIME AND COMPUTATION.

39. Time from which interest runs in general.
 - (1). In general.
 - (2). Judgments and decrees in general.
 - (2.5). Prejudgment interest in general.
 - (2.6). — In general.

219. INTEREST**III. TIME AND COMPUTATION.(Cont'd)**

- (2.10). — Discretion in general.
- (2.15). — Liquidated or unliquidated claims in general.
- (2.20). — Particular cases and issues.
- (2.25). — Admiralty and maritime matters.
- (2.30). — Contract and sales matters.
- (2.35). — Insurance matters.
- (2.40). — Labor relations and employment.
- (2.45). — Civil rights and discrimination.
- (2.50). — Torts; wrongful death.
- (2.55). — Punitive damages; penalties.
- (3). Interest from date of judgment or decree.
- (4). Money wrongfully procured or expended.
- (5). Accounts.
- (6). Loans and advances.
- 40. Statutory provisions as to time.
- 41. Stipulations as to time.
- 41.1. — In general.
- 42. — Payment of debt with interest in general.
- 43. — Particular provisions.
- 44. Creation or accrual of indebtedness.
- 45. Maturity of principal.
- 46. Demand for payment of principal.
 - (1). In general.
 - (2). Form and sufficiency of demand.
 - (3). Necessity.
- 47. Commencement of action.
 - (1). In general.
 - (2). Demands not liquidated.
- 48. Suspension.
- 49. — In general.
- 50. — Tender.
- 51. — Pendency of litigation.
- 52. — Injunction.
- 53. — Appeal or other proceedings for review.
- 54. — Stay of proceedings.
- 55. — War.
- 56. Mode of computation in general.

III. TIME AND COMPUTATION.(Cont'd)

- 57. Statutory provisions as to computation.
- 58. Rests in computation.
- 59. Application of partial payments.
 - (1). In general.
 - (2). Interest on partial payments.
- 60. Compound interest.

IV. RECOVERY.

- 61. Interest as incident to principal.
- 62. Interest as distinct cause of action.
- 63. Time to sue and limitations.
- 64. Pleading.
 - 64.1. — In general.
- 65. — Allegations as to interest.
- 66. — Demand for interest.
- 67. Evidence.
- 68. Questions for jury.

220. INTERNAL REVENUE**SUBJECTS INCLUDED**

- Taxes imposed by act of Congress other than duties on imports or exports
- Power to impose such taxes and constitutional and statutory provisions relating thereto
- Persons, occupations, transactions, property and incomes subject to tax
- Rate and amount of tax
- Levy, assessment, lien, collection and payment of taxes
- Remedies for erroneous taxation
- Forfeiture, penalties, and other punishments for violations of internal revenue laws

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Indian tribes, taxes imposed by, see INDIANS
- ☞225
- Licenses under state laws in general, see LICENSES
- Particular occupations, license for purpose of regulation thereof, see INTOXICATING LIQUORS and topics relating to particular occupations

220. INTERNAL REVENUE

Territories and states, taxation in, see TAXATION

I. NATURE AND EXTENT OF TAXING POWER IN GENERAL, ¶3001-3052.

- (A) IN GENERAL, ¶3001-3008.
- (B) EFFECT OF STATE LAWS AND JUDICIAL DECISIONS, ¶3009-3019.
- (C) VALIDITY OF STATUTES IN GENERAL, ¶3020-3023.
- (D) AMENDMENT, REPEAL AND REVIVAL OF STATUTES IN GENERAL, ¶3024-3026.
- (E) CONSTRUCTION AND OPERATION OF REVENUE LAWS IN GENERAL, ¶3027-3037.
- (F) ADMINISTRATIVE RULES, REGULATIONS AND DECISIONS, ¶3038-3052.
 - 1. MAKING, REQUISITES AND VALIDITY, ¶3038-3045.
 - 2. CONSTRUCTION AND OPERATION, ¶3046-3052.

II. LIABILITY OF PERSONS AND PROPERTY IN GENERAL, ¶3053-3055.

III. MINIMIZATION, AVOIDANCE OR EVASION OF LIABILITY, ¶3056-3058.

IV. DIRECT TAXES, ¶3059-3064.

V. INCOME TAXES, ¶3065-4129.

- (A) IN GENERAL, ¶3065-3074.
- (B) TAX PERIOD AND INCOME ATTRIBUTABLE THERETO, ¶3075-3094.
- (C) ACCOUNTING, ¶3095-3109.
- (D) INCOMES TAXABLE IN GENERAL, ¶3110-3149.
- (E) SALARIES, WAGES OR COMPENSATION, ¶3150-3169.
- (F) DEVICES OR BEQUESTS AND INCOME THEREFROM, ¶3170-3174.
- (G) GAINS AND LOSSES FROM SALES AND EXCHANGES IN GENERAL, ¶3175-3224.
- (H) CAPITAL OR ORDINARY GAINS AND LOSSES IN GENERAL, ¶3225-3269.
- (I) DEDUCTIONS, ¶3270-3519.
 - 1. IN GENERAL, ¶3270-3309.
 - 2. EXPENSES, ¶3310-3384.
 - 3. LOSSES, ¶3385-3449.
 - 4. OTHER TAXES PAID, ¶3450-3469.

V. INCOME TAXES—Cont'd

(I) DEDUCTIONS—Cont'd

- 5. DEPRECIATION, DEPLETION, OBSOLESCENCE, AND EXHAUSTION, ¶3470-3509.
- 6. CONTRIBUTIONS, ¶3510-3519.
- (J) CREDITS, ¶3520-3544.
- (K) RATES OF TAXATION, SURTAXES, AND ADDITIONAL TAXES, ¶3545-3559.
- (L) PERSONS LIABLE, ¶3560-3574.
- (M) DEFERRED COMPENSATION, ¶3575-3619.
- (N) CORPORATIONS AND STOCKHOLDERS, ¶3620-3884.
 - 1. IN GENERAL, ¶3620-3639.
 - 2. ORGANIZATION OF AND TRANSFERS TO CORPORATIONS, ¶3640-3659.
 - 3. REORGANIZATION, ¶3660-3694.
 - 4. COMPLETE LIQUIDATION, ¶3695-3724.
 - 5. COLLAPSIBLE CORPORATIONS, ¶3725-3739.
 - 6. DISTRIBUTIONS NOT IN COMPLETE LIQUIDATION, ¶3740-3829.
 - 7. CORPORATE ACCUMULATIONS, ¶3830-3864.
 - 8. CONSOLIDATED RETURNS, ¶3865-3884.
- (O) SMALL BUSINESS CORPORATIONS (SUBCHAPTER S CORPORATIONS), ¶3885-3909.
- (P) PARTNERSHIPS, JOINT VENTURES, AND SIMILAR ORGANIZATIONS, ¶3910-3949.
- (Q) BANKS, ¶3950-3964.
- (R) INSURANCE COMPANIES, ¶3965-3984.
- (S) COOPERATIVES, ¶3985-3994.
- (T) CERTAIN OTHER ORGANIZATIONS, ¶3995-3999.
- (U) ESTATES, TRUSTS, AND BENEFICIARIES, ¶4000-4034.
- (V) INCOME IN RESPECT OF DECEDENT, ¶4035-4044.
- (W) EXEMPT ORGANIZATIONS, ¶4045-4079.
- (X) INCOME FROM WITHIN AND WITHOUT THE UNITED STATES, ¶4080-4129.
 - 1. INCOME OF NONCITIZENS OR NONRESIDENTS, ¶4080-4094.
 - 2. INCOME FROM SOURCES WITHOUT THE UNITED STATES, ¶4095-4129.

220. INTERNAL REVENUE

- VI. EXCESS PROFITS AND WAR PROFITS TAXES, ☞4130-4139.
- VII. ESTATE TAXES, ☞4140-4199.
 - (A) IN GENERAL, ☞4140-4144.
 - (B) ESTATES OF CITIZENS OR RESIDENTS, ☞4145-4189.
 - (C) ESTATES OF NONRESIDENTS NOT CITIZENS OF THE UNITED STATES, ☞4190-4199.
- VIII. GIFT TAXES, ☞4200-4219.
- IX. GENERATION SKIPPING TRANSFER TAXES, ☞4220-4239.
- X. OCCUPATION OR BUSINESS TAXES, ☞4240-4259.
- XI. CORPORATION EXCISE TAXES, ☞4260-4269.
- XII. EXCISE TAXES ON FOUNDATIONS AND TRUSTS, ☞4270-4289.
- XIII. EXCISE TAXES ON PENSION, PROFIT-SHARING AND STOCK BONUS PLANS, ☞4290-4304.
- XIV. TAXES ON SPECIFIC ARTICLES AND TRANSACTIONS, ☞4305-4389.
 - (A) IN GENERAL, ☞4305-4324.
 - (B) MANUFACTURERS' AND PRODUCERS' EXCISE TAXES, ☞4325-4344.
 - (C) TRANSPORTATION AND COMMUNICATION TAXES, ☞4345-4350.
 - (D) EMPLOYMENT TAXES, ☞4351-4389.
- XV. DOCUMENTARY STAMP TAXES, ☞4390-4414.
- XVI. BONDS UNDER REVENUE LAWS, ☞4415-4429.
 - (A) IN GENERAL, ☞4415-4419.
 - (B) ACTIONS ON BONDS, ☞4420-4429.
- XVII. BONDED WAREHOUSES AND GOODS IN BOND, ☞4430-4439.
- XVIII. ADMINISTRATION OF TAXES GENERALLY, ☞4440-4469.
 - (A) IN GENERAL, ☞4440-4449.
 - (B) REVENUE OFFICERS AND AGENTS, ☞4450-4469.
- XIX. RETURNS AND REPORTS, ☞4470-4489.
- XX. EXAMINATION OF PERSONS AND RECORDS, ☞4490-4519.
- XXI. ASSESSMENT OF TAXES, ☞4520-4759.
 - (A) IN GENERAL, ☞4520-4564.
 - (B) TIME FOR ASSESSMENT AND LIMITATIONS, ☞4565-4614.
 - 1. IN GENERAL, ☞4565-4574.
 - 2. WAIVERS AND CONSENTS, ☞4575-4614.
- XXI. ASSESSMENT OF TAXES—Cont'd
 - (C) EVIDENCE, ☞4615-4634.
 - (D) RELIEF FROM ASSESSMENT, ☞4635-4644.
 - (E) REVIEW BY TAX COURT, ☞4645-4674.
 - (F) REVIEW OF TAX COURT DECISIONS, ☞4675-4759.
 - 1. IN GENERAL, ☞4675-4684.
 - 2. DECISIONS REVIEWABLE, RIGHT OF REVIEW, AND PRESENTATION OF GROUNDS OF REVIEW, ☞4685-4689.
 - 3. PROCEEDINGS FOR REVIEW, ☞4690-4699.
 - 4. SCOPE AND EXTENT OF REVIEW, ☞4700-4709.
 - 5. DISCRETION OF TAX COURT OR OF COMMISSIONER, ☞4710-4714.
 - 6. PRESUMPTIONS, ☞4715-4729.
 - 7. QUESTIONS OF FACT AND FINDINGS, ☞4730-4754.
 - 8. DETERMINATION AND DISPOSITION OF CAUSE, ☞4755-4759.
- XXII. COMPROMISES AND CLOSING AGREEMENTS, ☞4760-4764.
- XXIII. LIENS, ☞4765-4809.
- XXIV. PAYMENT, ☞4810-4839.
- XXV. COLLECTION, ☞4840-4869.
 - (A) IN GENERAL, ☞4840-4854.
 - (B) LEVY OR DISTRAINT, ☞4855-4869.
- XXVI. ACTIONS FOR TAXES, ☞4870-4914.
 - (A) IN GENERAL, ☞4870-4879.
 - (B) TIME TO SUE AND LIMITATIONS, ☞4880-4902.
 - 1. IN GENERAL, ☞4880-4889.
 - 2. COMPUTATION OF PERIOD, ☞4890-4894.
 - 3. WAIVER OF LIMITATIONS, ☞4895-4902.
 - (C) PARTIES, ☞4903.
 - (D) PROCESS AND APPEARANCE, ☞4904.
 - (E) PLEADING, ☞4905-4907.
 - (F) EVIDENCE, ☞4908-4911.
 - (G) TRIAL, JUDGMENT, AND REVIEW, ☞4912-4914.
- XXVII. REMEDIES FOR WRONGFUL ENFORCEMENT, ☞4915-4949.
 - (A) IN GENERAL, ☞4915-4919.
 - (B) TAXES AND SUITS WITHIN STATUTORY PROHIBITION, ☞4920-4924.
 - (C) GROUNDS FOR INJUNCTION, ☞4925-4934.

220. INTERNAL REVENUE

XXVII. REMEDIES FOR WRONGFUL ENFORCEMENT—Cont'd

(C) GROUNDS FOR INJUNCTION—Cont'd

1. IN GENERAL, ⑈4925–4929.
2. SPECIAL GROUNDS OF EQUITY JURISPRUDENCE AND EXCEPTIONAL CIRCUMSTANCES, ⑈4930–4934.

(D) PROCEEDINGS, ⑈4935–4949.

XXVIII. REFUNDING TAXES, ⑈4950–5124.

(A) IN GENERAL, ⑈4950–4979.

(B) ACTIONS FOR REFUNDS, ⑈4980–5124.

1. IN GENERAL, ⑈4980–4989.
2. GROUNDS OF ACTION, ⑈4990–4999.

3. CONDITIONS PRECEDENT, ⑈5000–5014.

4. DEFENSES, ⑈5015–5029.

5. TIME TO SUE AND LIMITATIONS, ⑈5030–5054.

6. PERSONS ENTITLED TO SUE AND PERSONS LIABLE, ⑈5055–5064.

7. PARTIES, PRELIMINARY PROCEEDINGS AND PLEADING, ⑈5065–5074.

8. EVIDENCE, ⑈5075–5094.

9. TRIAL, JUDGMENT AND REVIEW, ⑈5095–5124.

XXIX. SEARCHES AND SEIZURES, ⑈5125–5139.

XXX. FORFEITURES, ⑈5140–5199.

(A) IN GENERAL, ⑈5140–5154.

(B) PROPERTY SUBJECT TO FORFEITURE AND GROUNDS THEREFOR, ⑈5155–5164.

(C) PROCEEDINGS AND RELIEF, ⑈5165–5189.

(D) MITIGATION AND REMISSION, ⑈5190–5199.

XXXI. PENALTIES AND ADDITIONS TO TAX, ⑈5200–5249.

(A) IN GENERAL, ⑈5200–5214.

(B) GROUNDS AND AMOUNT, ⑈5215–5224.

(C) ASSESSMENT, ⑈5225–5239.

(D) COMPROMISE, ⑈5240.

(E) REMISSION, ⑈5241–5244.

(F) INJUNCTIONS, ⑈5245.

(G) ACTIONS FOR REFUND, ⑈5246–5249.

XXXII. OFFENSES, ⑈5250–5324.

(A) IN GENERAL, ⑈5250–5279.

(B) CRIMINAL PROSECUTION, ⑈5280–5324.

XXXIII. DISPOSITION OF PROCEEDS OF PENALTIES, FORFEITURES, AND FINES, ⑈5325–5329.

XXXIV. COSTS AND FEES, ⑈5330–5349.

I. NATURE AND EXTENT OF TAXING POWER IN GENERAL.

(A) IN GENERAL.

3001. Nature of taxes and excises.
3002. Constitutional provisions in general.
3003. Power to tax and regulate in general.
3004. Delegation of power.
3005. Territorial extent of power.
3006. Limitation on taxing power.
3007. Purposes of taxation in general.
3008. Rate or amount of tax.

(B) EFFECT OF STATE LAWS AND JUDICIAL DECISIONS.

3009. In general.
3010. State law invoked by federal statute.
3011. Application of state-created rights and interests in general.
3012. Judicial decisions.
3013. Income and excess profits taxes.
- 3013.1. — In general.
3014. — Deductions, credits and exemptions.
3015. — Community property law.
3016. Estate tax.
3017. Miscellaneous taxes.
3018. Assessment and collection.
3019. Offenses and prosecutions.

(C) VALIDITY OF STATUTES IN GENERAL.

3020. In general.
3021. Double taxation.
3022. Equality and uniformity of taxes.
3023. Retroactive provisions.

(D) AMENDMENT, REPEAL AND REVIVAL OF STATUTES IN GENERAL.

3024. Amendment.
3025. Repeal.
3026. Revival.

(E) CONSTRUCTION AND OPERATION OF REVENUE LAWS IN GENERAL.

3027. In general.
3028. Judicial authority and duty.

220. INTERNAL REVENUE**I. NATURE AND EXTENT OF TAXING
POWER IN GENERAL.(Cont'd)**

- 3029. Intention of Congress.
- 3030. Meaning of language.
- 3031. Definitions of general application.
- 3032. Liberal or strict construction.
- 3033. Construction as a whole.
- 3034. Extrinsic aids to construction in general.
- 3035. Construction with reference to other statutes.
- 3036. Retroactive operation.
- 3037. Executive construction.

**(F) ADMINISTRATIVE RULES, REGULATIONS
AND DECISIONS.****1. MAKING, REQUISITES AND VALIDITY.**

- 3038. In general.
- 3039. Power to make in general.
- 3040. Approval by Congress.
- 3041. Retroactive provisions.
- 3042. Subject matter and purpose.
- 3043. Internal Revenue Service rulings.
- 3044. Other determinations; bulletins.
- 3045. Change or repeal of regulations, rulings and other determinations.

2. CONSTRUCTION AND OPERATION.

- 3046. In general.
- 3047. Operation and effect.
- 3047.1. — In general.
- 3048. — Rules and regulations.
- 3049. — Revenue rulings and letter rulings.
- 3050. — Acquiescence in Tax Court decisions.
- 3051. — Other determinations.
- 3052. — Retroactive operation.

**II. LIABILITY OF PERSONS AND
PROPERTY IN GENERAL.**

- 3053. In general.
- 3054. Public property and institutions.
- 3055. Exemptions in general.

**III. MINIMIZATION, AVOIDANCE OR
EVASION OF LIABILITY.**

- 3056. In general.
- 3057. Income taxes.

**III. MINIMIZATION, AVOIDANCE OR
EVASION OF LIABILITY.(Cont'd)**

- 3058. Estate, inheritance, gift, legacy and transfer taxes.

IV. DIRECT TAXES.

- 3059. In general.
- 3060. What constitutes direct taxes.
- 3060.1. — In general.
- 3061. — Capitations and taxes on realty or personalty or income therefrom.
- 3062. — Income taxes.
- 3063. — Estate, inheritance, gift, legacy and transfer taxes.
- 3064. — Other particular taxes.

V. INCOME TAXES.**(A) IN GENERAL.**

- 3065. In general.
- 3066. Nature of tax.
- 3067. Power to impose.
- 3068. Construction of income tax laws in general.
- 3069. Particular words and phrases.
- 3070. Construction with reference to other laws.
- 3071. Substance or form of transaction.
- 3072. Recognition of and determination of gain or loss in general.

**(B) TAX PERIOD AND INCOME
ATTRIBUTABLE THERETO.**

- 3075. In general.
- 3076. Constitutional and statutory provisions.
- 3077. Rules and regulations.
- 3078. When income accrues in general.
- 3079. Time when earned or determinable.
- 3080. Time when received in general.
- 3081. Time when available to taxpayer.
- 3082. Compensation for services.
- 3083. Compromise of claims.
- 3084. Gains from sales or exchanges in general.
- 3085. Interest.
- 3086. Liability to restore income received.
- 3087. Option payments.
- 3088. Profits under contracts.
- 3089. Recovery of items previously deducted.
- 3090. Rentals.

220. INTERNAL REVENUE**V. INCOME TAXES.(Cont'd)**

- 3090.1. — In general.
- 3091. — Mineral leases.
- 3092. Income averaging or spreading.
- 3093. Evidence.

(C) ACCOUNTING.

- 3095. In general.
- 3096. Constitutional and statutory provisions; rules and regulations.
- 3097. Accounting periods.
- 3098. Accrual or cash methods.
- 3099. Accrual method.
- 3100. Cash method.
- 3101. Completed contracts method.
- 3102. Change by taxpayer of method or period.
- 3103. Change of taxpayer's method by or at behest of Commissioner.
- 3104. Installment basis.
- 3105. Inventories.
- 3105.1. — In general.
- 3106. — Dealers in securities.
- 3107. Evidence.

(D) INCOMES TAXABLE IN GENERAL.

- 3110. Nature and necessity of income in general.
- 3111. Constitutional and statutory provisions.
- 3112. Rules and regulations.
- 3113. Amount and computation in general.
- 3114. Net income.
- 3115. Necessity that income be realized.
- 3116. Noncash receipts.
- 3117. Payment other than by gold, silver or other particular currency.
- 3118. Liability to restore income received; contingent receipt.
- 3119. Particular acts or transactions resulting in income.
- 3120. Alimony and family allowances.
- 3121. Annuities.
- 3122. Compensation for covenant not to engage in competing business.
- 3123. Compromise of claim or liability.
- 3124. Damages.
- 3125. Discharge or cancellation of debt; assumption of obligations by another.
- 3126. Discount of indebtedness or liability.

V. INCOME TAXES.(Cont'd)

- 3127. Erroneously or illegally acquired income.
- 3128. Forfeited or unclaimed money.
- 3129. Gifts and income therefrom.
- 3130. Improvements by lessees.
- 3131. Insurance proceeds.
- 3132. Interest received.
- 3132.1. — In general.
- 3132.10. — Interest paid by state or local governments.
- 3132.20. — Imputed or unstated interest.
- 3133. Loans.
- 3133.1. — In general.
- 3134. — Commodity credit loans.
- 3135. Prizes and awards.
- 3136. Purchase at discount of obligations assumed.
- 3137. Purchases below value.
- 3138. Recoupment or reduction of losses or deductions.
- 3139. Rents in general.
- 3140. Rents, royalties and bonuses under mineral leases.
- 3141. Taxes paid by another.
- 3142. Trade or business.
- 3143. Evidence.

(E) SALARIES, WAGES OR COMPENSATION.

- 3150. In general.
- 3151. Constitutional and statutory provisions.
- 3152. Rules and regulations.
- 3153. Earned income.
- 3154. Extra compensation or gift.
- 3155. Medium of payment.
- 3156. Bonuses.
- 3157. Payments to widows, dependents or estates of employees.
- 3158. Food and lodging; housing allowances.
- 3159. Moving expense allowance or reimbursement.
- 3160. Travel and entertainment.
- 3161. Sick pay; payments pursuant to accident, health or disability plans.
- 3162. Stock.
- 3163. Tips or gratuities.
- 3164. Scholarships and fellowships.
- 3165. Commissions.

220. INTERNAL REVENUE**V. INCOME TAXES.(Cont'd)**

- 3166. Renewal commissions.
- 3167. Evidence.

(F) DEVICES OR BEQUESTS AND INCOME THEREFROM.

- 3170. In general.
- 3171. Constitutional and statutory provisions.
- 3172. Rules and regulations.
- 3173. Income from bequests.
- 3174. Evidence.

(G) GAINS AND LOSSES FROM SALES AND EXCHANGES IN GENERAL.

- 3175. In general.
- 3176. Constitutional and statutory provisions.
- 3177. Rules and regulations.
- 3178. Realization of gain or loss.
- 3179. What are sales or dispositions resulting in gain or loss.
- 3180. Sale or lease.
- 3181. Goodwill.
- 3182. Gift of property appreciated in value.
- 3183. Options.
- 3184. Exchange of property.
- 3185. Transactions between or among related persons.
- 3186. Installment sales.
- 3187. Involuntary transfers.
- 3188. — In general.
- 3189. — Replacement property.
- 3190. — Time of replacement.
- 3191. Disposition to implement government policies, orders or laws.
- 3192. Transfer pursuant to divorce decree or settlement.
- 3193. Sale or exchange of residence.
- 3194. Computation of gain or loss in general.
- 3195. Cost or value of property; basis.
- 3196. Market value.
- 3197. Adjustments to basis.
- 3198. Cost or expense incurred in acquisition, maintenance, improvement or disposition of property.
- 3199. Depreciation.
- 3200. Allocation of basis.
- 3201. Carryover basis.
- 3202. Time with reference to which value is determined.
- 3203. Selling price.

V. INCOME TAXES.(Cont'd)

- 3204. Property of estates of decedents.
- 3205. Property acquired by devise, bequest or inheritance.
- 3206. Property acquired by gift.
- 3207. Property held in trust.
- 3208. Sale of corporate stock.
- 3208.1. — In general.
- 3209. — Cost basis.
- 3210. — Stock received in exchange.
- 3211. — Sale of stocks received at different times and at different prices.
- 3212. — "First in first out" rule.
- 3213. — Short sales.
- 3214. Exchange of stocks and bonds.
- 3215. Exchange of stocks for other property.
- 3216. Wash sales.
- 3217. Evidence.

(H) CAPITAL OR ORDINARY GAINS AND LOSSES IN GENERAL.

- 3225. In general.
- 3226. Constitutional and statutory provisions.
- 3227. Rules and regulations.
- 3228. Capital additions.
- 3229. Capital expenditures.
- 3230. Capital gains or losses.
- 3230.1. — In general.
- 3231. — Special treatment in general.
- 3232. — Capital assets and sale or exchange.
- 3233. — Trade or business of taxpayer.
- 3234. — Fact questions.
- 3235. Particular factors and transactions.
- 3236. — In general.
- 3237. — Sale of business in general.
- 3238. — Covenants not to compete.
- 3239. — Goodwill.
- 3240. — Assignment of future income.
- 3241. — Inventory.
- 3242. — Stock acquired or retained for business purposes.
- 3243. — Small business stock.
- 3244. — Securities dealers.
- 3245. — Worthless securities.
- 3246. — Discharge of obligations; settlements of claims.
- 3247. — Family transactions and inherited property.

220. INTERNAL REVENUE**V. INCOME TAXES.(Cont'd)**

- 3248. — Inventions, trademarks and intellectual or literary property.
- 3249. — Land in general.
- 3250. — Land in trade or business.
- 3251. — Subdivision and improvement of land and sale of lots.
- 3252. — Crops and timber.
- 3253. — Livestock.
- 3254. — Minerals and mineral interests.
- 3255. — Securities, insurance and evidence of indebtedness.
- 3256. — Short sales, futures and hedging, options and purchase rights.
- 3257. — Services and compensation therefor.
- 3258. Time element, capital gains or losses.
- 3259. — In general; accrual of gain or loss.
- 3260. — Duration of ownership.
- 3261. Evidence.

(I) DEDUCTIONS.**1. IN GENERAL.**

- 3270. In general.
- 3271. Constitutional and statutory provisions.
- 3272. Rules and regulations.
- 3273. Time or period for which allowed.
- 3274. Items deductible in general.
- 3275. Contingent or undetermined liabilities.
- 3276. Cost of acquiring property or interest.
- 3277. Income paid or transferred to another.
- 3278. Income previously taxed.
- 3279. Interest paid or accrued.
- 3280. — In general.
- 3281. — What constitutes interest or indebtedness in general.
- 3282. — Particular transactions.
- 3283. — Relatives and spouses, transactions involving.
- 3284. — Taxes and indebtedness to government.
- 3285. — Enforceability of obligation.
- 3286. — Payment or accrual.
- 3287. Payments in discharge of obligations in general.
- 3288. Alimony or separate maintenance payments.
- 3288.1. — In general.

V. INCOME TAXES.(Cont'd)

- 3289. — Periodic or installment payments.
- 3290. — Support of children.
- 3291. — Insurance premiums.
- 3292. Reduction of inventory.
- 3293. Reserves for contingencies.
- 3294. Deduction for personal exemptions.
- 3295. — In general.
- 3296. — Dependents in general.
- 3297. — Children.
- 3298. — Parents.
- 3299. Persons entitled in general.
- 3300. Evidence.

2. EXPENSES.

- 3310. In general.
- 3311. Constitutional and statutory provisions.
- 3312. Rules and regulations.
- 3313. Accounting methods and bookkeeping.
- 3314. Expenses of trade or business.
- 3314.1. — In general.
- 3315. — What constitutes trade or business.
- 3316. — Particular activities.
- 3317. — Executors or other fiduciaries as engaged in business.
- 3318. — Ordinary and necessary expenses.
- 3319. Capital or ordinary expenses in general.
- 3320. Compensation for services.
- 3321. — In general.
- 3322. — Salaries.
- 3323. — Reasonableness.
- 3324. — Commissions.
- 3325. — Share in profits.
- 3326. — Bonuses and gratuities.
- 3327. Litigation expenses in general.
- 3328. Attorney fees.
- 3328.1. — In general.
- 3329. — In conduct of litigation.
- 3330. — Combined with other expenses.
- 3331. Advertising and promotional expenses.
- 3332. Start-up costs.
- 3333. Experimental expenditures.
- 3334. Cost of acquiring property or interest.
- 3335. Cost of equipment.
- 3336. Cost of issuing and redeeming securities.
- 3337. Contributions.
- 3338. Entertainment.

220. INTERNAL REVENUE**V. INCOME TAXES.(Cont'd)**

- 3339. Travel.
- 3340. — In general.
- 3341. — Commuting expenses.
- 3342. — Food and lodging.
- 3343. — Necessity that expenses be incurred away from home; determination of taxpayer's home.
- 3344. — Temporary or indefinite employment.
- 3345. — Educational travel.
- 3346. — Expenses of spouse or other companion.
- 3347. Fines, costs and penalties.
- 3348. Goodwill and preservation of credit.
- 3349. Improvements, maintenance and repairs.
- 3349.1. — In general.
- 3350. — Permanent improvements.
- 3351. — Repairs.
- 3352. Insurance premiums.
- 3353. Liabilities incurred or paid.
- 3354. License fees.
- 3355. Home office expenses.
- 3356. Membership dues and fees.
- 3357. Education expenses.
- 3358. Settlements and compromises.
- 3359. Farm and ranch expenses.
- 3360. Oil, gas and other minerals, exploration for and development of.
- 3361. Election expenses.
- 3362. Rents and royalties.
- 3363. Nonbusiness expenses incurred for the production of income.
- 3364. Personal, family and living expenses.
- 3365. Child care expenses.
- 3366. Medical expenses.
- 3367. Moving expenses.
- 3368. Public policy, violation of.
- 3368.1. — In general.
- 3369. — Political activity and lobbying.
- 3370. Miscellaneous other expenses.
- 3371. Reimbursement or compensation by insurance or otherwise.
- 3372. Year or period when deductible.
- 3372.1. — In general.
- 3373. — Time when incurred or accrued.
- 3374. — Salaries, wages and compensation.

V. INCOME TAXES.(Cont'd)

- 3375. — Improvements and repairs.
- 3376. — Rents and royalties.
- 3377. Evidence.

3. LOSSES.

- 3385. In general.
- 3386. Constitutional and statutory provisions.
- 3387. Rules and regulations.
- 3388. Necessity and determination of actual losses.
- 3388.1. — In general.
- 3389. — Necessity of actual loss.
- 3390. — Certainty of loss.
- 3391. — Necessity that loss be sustained and determined during tax year.
- 3392. — Establishment of fact and time of loss in general.
- 3393. — Closed transaction.
- 3394. — Fixed or identifiable event.
- 3395. Persons entitled to deduction in general.
- 3396. Trade or business.
- 3397. Transactions for profit.
- 3398. Amortization of debt discount and expenses.
- 3399. Amount and items deductible in general.
- 3400. Attorney fees and other compensation for services.
- 3401. Business becoming unlawful.
- 3402. Capital expenditures.
- 3403. Cost or value of property in general.
- 3404. Contributions to restore solvency.
- 3405. Demolition or removal of buildings or other structures.
- 3406. Depreciation in value.
- 3407. Discharge of debt.
- 3408. Expenses as losses.
- 3409. Goodwill.
- 3410. Illegal or negligent acts.
- 3411. Installment contracts.
- 3412. Interest.
- 3413. Inventory losses and rebates.
- 3414. Liability on guaranty or indemnity.
- 3415. Losses not compensated by insurance or otherwise.
- 3416. Casualty losses.
- 3416.1. — In general.

220. INTERNAL REVENUE**V. INCOME TAXES.(Cont'd)**

- 3417. — Embezzlement or theft.
- 3418. Nature and cause of loss in general.
- 3419. Worthless debts.
- 3419.1. — In general.
- 3420. — Nature and existence of debt.
- 3421. — Debts worthless in part.
- 3422. — Effect of security.
- 3423. — Ascertainment and determination of worthlessness.
- 3424. — Efforts to collect.
- 3425. — Charging off.
- 3426. — Amount deductible.
- 3427. — Reserve for debts.
- 3428. Worthless property.
- 3429. Worthless stock.
- 3430. Year or period in which deductible.
- 3430.1. — In general.
- 3431. — Accounting methods.
- 3432. — Ascertainment and establishment of fact of loss in general.
- 3433. — Closed transactions.
- 3434. — Sale.
- 3435. — Action and judgment.
- 3436. — Bankruptcy, insolvency, or liquidation.
- 3437. — Part of year.
- 3438. — Previous or subsequent years.
- 3439. — Carryover.
- 3440. — Amortization of debt discount.
- 3441. — Worthless property, debts or stock.
- 3442. Evidence.

4. OTHER TAXES PAID.

- 3450. In general.
- 3451. Constitutional and statutory provisions.
- 3452. Rules and regulations.
- 3453. Federal taxes.
- 3453.1. — In general.
- 3454. — Estate taxes.
- 3455. — Income and excess profits taxes.
- 3456. State taxes.
- 3456.1. — In general.
- 3457. — Inheritance and transfer taxes.
- 3458. — Income taxes.
- 3459. — Property taxes.
- 3460. Evidence.

5. DEPRECIATION, DEPLETION, OBSOLESCENCE, AND EXHAUSTION.

- 3470. In general.
- 3471. Constitutional and statutory provisions.
- 3472. Rules and regulations.
- 3473. Persons entitled.
- 3473.1. — In general.
- 3474. — Lessors or lessees.
- 3475. — Estates and trusts.
- 3476. Year or period.
- 3477. Amount and items in general.
- 3478. Cost or value of property.
- 3479. Grounds for disallowance.
- 3480. Subject-matter in general.
- 3481. Obsolescence or exhaustion.
- 3482. Property used in trade or business.
- 3483. Buildings and other structures.
- 3484. Emergency facilities.
- 3485. Goodwill.
- 3486. Mines.
- 3486.1. — In general.
- 3487. — Persons entitled; economic interest.
- 3488. — Lease.
- 3489. — Amount and items in general.
- 3490. — Percentage depletion.
- 3491. — Kind of mineral affecting depletion rate.
- 3492. — Treatment processes, packaging and distribution.
- 3493. Oil and gas.
- 3493.1. — In general.
- 3494. — Persons entitled.
- 3495. — Interest in property.
- 3496. — Lessors and lessees.
- 3497. — Stockholders.
- 3498. — Vendors and assignors.
- 3499. — Apportionment between lessor and lessee.
- 3500. — Mode of allowance and election of taxpayer.
- 3501. — Amount and items.
- 3502. Patents, copyrights, trade-marks and trade-names.
- 3503. Pollution control facilities.
- 3504. Timber.
- 3505. Evidence.

6. CONTRIBUTIONS.

- 3510. In general.

220. INTERNAL REVENUE**V. INCOME TAXES.(Cont'd)**

- 3511. Constitutional and statutory provisions.
- 3512. Rules and regulations.
- 3513. Charitable organizations and purposes.
- 3513.10. Incidence of benefits.
- 3513.20. Control or use by charity.
- 3513.30. Dual purpose payments.
- 3513.40. Services and unreimbursed expenses.
- 3514. Estates and trusts.
- 3515. Amount and computation.
- 3516. Evidence.

(J) CREDITS.

- 3520. In general.
- 3521. Constitutional and statutory provisions.
- 3522. Rules and regulations.
- 3523. Investment credit.
- 3524. — In general.
- 3525. — Property for which credit may be taken.
- 3526. — Tangible or intangible nature of property.
- 3527. — Buildings.
- 3528. — Storage facilities.
- 3529. — Persons entitled.
- 3530. — Amount and computation.
- 3531. — Recapture.
- 3532. Earned income credit.
- 3533. Energy conservation.
- 3534. Household and dependent care services.
- 3535. Retirement income credit.
- 3536. Work incentive programs; new employees.
- 3537. Evidence.

(K) RATES OF TAXATION, SURTAXES, AND ADDITIONAL TAXES.

- 3545. Rates in general.
- 3546. Constitutional and statutory provisions.
- 3547. Rules and regulations.
- 3548. Particular individuals.
- 3549. Heads of households.
- 3550. Minimum tax on preferred items.
- 3551. Maximum tax on earned income.
- 3552. Evidence.

(L) PERSONS LIABLE.

- 3560. In general.

V. INCOME TAXES.(Cont'd)

- 3561. Constitutional and statutory provisions.
- 3562. Rules and regulations.
- 3563. Assignors or assignees.
- 3564. Governments and subdivisions.
- 3565. Grantors.
- 3566. Husbands or wives.
- 3566.1. — In general.
- 3567. — Community or separate income.
- 3568. — Transfer of property or income to spouse.
- 3569. — Undivided interests.
- 3570. Indians.
- 3571. Evidence.

(M) DEFERRED COMPENSATION.

- 3575. In general.
- 3576. Constitutional and statutory provisions.
- 3577. Rules and regulations.
- 3578. Pension, profit sharing and stock bonus plans.
- 3579. — In general.
- 3580. — Qualification requirements.
- 3581. — Necessity and requisites of plan.
- 3582. — Coverage; nondiscrimination.
- 3583. — Contributions and benefits; funding and vesting.
- 3584. — Deduction of employers' contributions.
- 3585. — Time when deductible; payment.
- 3586. — Excess contributions carryover.
- 3587. — Distributions.
- 3588. — Constructive receipt.
- 3589. — Lump sum distributions in general.
- 3590. — Separation from service.
- 3591. — Termination of plan.
- 3592. — Merger, liquidation or reorganization of employer.
- 3593. Self-employed individuals.
- 3594. Individual retirement accounts.
- 3595. Small business corporation plans.
- 3596. Nonqualified plans.
- 3597. — In general.
- 3598. — Deferred compensation contracts.
- 3599. — Restricted property plans.
- 3600. — Substantial risk of forfeiture.
- 3601. Income of employees' trusts.

220. INTERNAL REVENUE**V. INCOME TAXES.(Cont'd)**

- 3602. Employee stock option plans.
- 3615. Evidence.

(N) CORPORATIONS AND STOCKHOLDERS.**1. IN GENERAL.**

- 3620. In general.
- 3621. Constitutional and statutory provisions.
- 3622. Rules and regulations.
- 3623. Associations taxable as corporations.
- 3623.1. — In general.
- 3624. — Particular associations.
- 3625. — Trusts.
- 3626. Attribution of income to stockholder or corporation.
- 3627. Purchase by corporation of its own stock or securities.
- 3628. Exchange of stock for cancellation of indebtedness.
- 3629. Sales between stockholders and corporations.
- 3629.1. — In general.
- 3630. — Control or ownership.
- 3631. Deductions peculiar to corporations.
- 3632. Rate of taxes and surtaxes.
- 3632.1. — In general.
- 3633. — Related corporations; controlled groups.
- 3634. Evidence.

2. ORGANIZATION OF AND TRANSFERS TO CORPORATIONS.

- 3640. In general.
- 3641. Constitutional and statutory provisions.
- 3642. Rules and regulations.
- 3643. Transfers to controlled corporations.
- 3643.1. — In general.
- 3644. — Capital contributions.
- 3645. — Control or ownership.
- 3646. — Property transferred.
- 3647. — Stock or securities received; boot.
- 3648. — Assumption of liabilities.
- 3649. Exchange of stock for property.
- 3650. Basis of stock or property received.
- 3651. Expenses incurred in organization, deduction or capitalization of.
- 3652. Evidence.

3. REORGANIZATION.

- 3660. In general.
- 3661. Constitutional and statutory provisions.
- 3662. Rules and regulations.
- 3663. Plan of reorganization.
- 3664. Acts constituting reorganization in general.
- 3665. Sale or reorganization.
- 3666. Parties to reorganization.
- 3667. Types of reorganization.
- 3667.1. — In general.
- 3668. — Dissolution of transferring corporation; merger and consolidation.
- 3669. — Exchange of stock or securities for other stock or securities.
- 3670. — Exchange of assets for stock or securities.
- 3671. — Recapitalization.
- 3672. — Change in identity, form or place.
- 3673. — Insolvency reorganizations.
- 3674. Distributions pursuant to reorganization; spin-offs.
- 3675. Business purpose.
- 3676. Conduct of business after distribution.
- 3677. Continuing interest in transferee.
- 3678. Control of transferee after transfer.
- 3679. Exchanges not solely in kind; receipt of boot.
- 3680. Multiple or step transactions.
- 3681. Basis of property received.
- 3682. Capital or ordinary gain.
- 3683. Carryover of losses or other deductions.
- 3684. Acquisitions to evade or avoid taxes.
- 3685. Expenses incurred in reorganization; deduction or capitalization of.
- 3686. Evidence.

4. COMPLETE LIQUIDATION.

- 3695. In general.
- 3696. Constitutional and statutory provisions.
- 3697. Rules and regulations.
- 3698. Recognition of gain or loss by corporation.
- 3699. Sale or exchange of property.
- 3699.1. — In general.
- 3700. — What constitutes property.
- 3701. — Stock in trade, inventory and installment obligations.
- 3702. — Assets retained to meet claims.

220. INTERNAL REVENUE**V. INCOME TAXES. (Cont'd)**

- 3703. — Items previously expensed and deducted; tax benefit rule.
- 3704. — Plan of liquidation.
- 3705. — Period of liquidation.
- 3706. Involuntary conversions.
- 3707. Distributions to stockholders.
- 3708. Liquidating dividends.
- 3709. Election as to recognition of gain.
- 3710. Basis of property received in general.
- 3711. Liquidation of corporate subsidiaries.
- 3712. Basis of property received by corporate transferee.
- 3712.1. — In general.
- 3713. — Liquidation following distributee's purchase of distributor's stock.
- 3714. — Cash and cash equivalents.
- 3715. Allocation of basis.
- 3716. Carryover of operating losses.
- 3717. Expenses incurred in liquidation, deduction or capitalization of.
- 3718. Evidence.

5. COLLAPSIBLE CORPORATIONS.

- 3725. In general.
- 3726. Constitutional and statutory provisions.
- 3727. Rules and regulations.
- 3728. What is a collapsible corporation.
- 3729. Purpose, intent or view.
- 3730. Construction or production of property.
- 3731. Realization of income.
- 3732. Purposes of sale of stock.
- 3733. Gain attributable to property.
- 3734. Nonliquidating distributions.
- 3735. Evidence.

6. DISTRIBUTIONS NOT IN COMPLETE LIQUIDATION.

- 3740. Dividends and property distributions.
- 3740.1. — In general.
- 3741. — Constitutional and statutory provisions.
- 3742. — Rules and regulations.
- 3743. — Distributions constituting dividends in general.
- 3744. — Declaration.
- 3745. — Receipt or availability.
- 3746. — Motive and intent.
- 3747. — Source of distribution; earnings and profits.

V. INCOME TAXES. (Cont'd)

- 3748. — Distribution of property.
- 3749. — Particular distributions.
- 3750. — Constructive dividends or dividend equivalents in general.
- 3751. — Diversion of funds from corporations.
- 3752. — Sales of property to stockholders.
- 3753. — Dividends or compensation for services.
- 3754. — Loans or advances to stockholders.
- 3755. — Personal expenses or obligations of stockholders, payment by corporation.
- 3756. — Redemption of stock that remaining stockholders are obligated to purchase.
- 3757. — Cancellation of indebtedness.
- 3758. — Gifts; payments to relatives or heirs of stockholders.
- 3759. — Dividends or charitable contributions.
- 3760. — Transfers between affiliated corporations.
- 3761. — Imputation to corporation of proceeds from sale of distributed property; anticipatory assignment.
- 3762. — Advances by stockholders to corporations; debt or equity in general.
- 3763. — Distributions as dividends or loan repayments.
- 3764. — Distributions as dividends or interest payments.
- 3765. — Intent.
- 3766. — Debt to equity ratio; capitalization.
- 3767. — Pro-rata or proportional advances.
- 3768. — Obligation to repay; contingencies.
- 3769. — Subordination.
- 3770. — Demand for repayment.
- 3771. — Payment of dividends.
- 3772. — Business purpose.
- 3773. — Use of funds.
- 3774. — Transactions between parents and subsidiaries.
- 3775. — Time when taxable.
- 3776. — Amount and computation.

220. INTERNAL REVENUE

V. INCOME TAXES.(Cont'd)

- 3777. — Dividends received by corporations, deduction for.
- 3778. — Evidence.
- 3785. Stock dividends and stock rights.
- 3785.1. — In general.
- 3786. — Constitutional and statutory provisions.
- 3787. — Rules and regulations.
- 3788. — Distributions constituting stock dividends.
- 3789. — Purpose and source of distribution.
- 3790. — Change of interest.
- 3791. — Choice of stock or cash.
- 3792. — Different kind of stock.
- 3793. — Stock in another corporation.
- 3794. — Subscription rights.
- 3795. — Amount and computation; basis.
- 3796. — Evidence.
- 3800. Stock redemptions.
- 3800.1. — In general.
- 3801. — Constitutional and statutory provisions.
- 3802. — Rules and regulations.
- 3803. — Transactions constituting redemptions.
- 3804. — Redemptions equivalent to dividends in general.
- 3805. — Change in stockholder's interest.
- 3806. — Business purpose; motive and intent.
- 3807. — Source of distribution; earnings and profits.
- 3808. — Disproportionate redemptions.
- 3809. — Termination of interest in general.
- 3810. — Filing requirements.
- 3811. — Redemptions to pay death taxes.
- 3812. — Related or commonly owned corporations.
- 3813. — Preferred stock redemptions; bail outs.
- 3814. — Multiple or step transactions.
- 3815. — Ownership of stock; attribution rules.
- 3816. — Amount and computation; basis.
- 3817. — Evidence.
- 3820. Partial liquidations.
- 3820.1. — In general.

V. INCOME TAXES.(Cont'd)

- 3821. — Constitutional and statutory provisions.
- 3822. — Rules and regulations.
- 3823. — Transactions constituting partial liquidations.
- 3824. — Plan of liquidation.
- 3825. — Surrender or cancellation of stock.
- 3826. — Contraction or termination of corporate business.
- 3827. — Evidence.

7. CORPORATE ACCUMULATIONS.

- 3830. Unreasonable accumulations.
- 3830.1. — In general.
- 3831. — Constitutional and statutory provisions.
- 3832. — Rules and regulations.
- 3833. — Accumulated income in general.
- 3834. — Deductions and credits.
- 3835. — Reasonableness of accumulation in general.
- 3836. — Motive and intent; tax avoidance.
- 3837. — Amount of retained earnings relative to operating expenses.
- 3838. — Working capital requirements.
- 3839. — Ratio of assets to liabilities.
- 3840. — Acquisition or expansion of facilities; entry into new business.
- 3841. — Necessity and sufficiency of business plan.
- 3842. — Reserves for debts, hazards or emergencies.
- 3843. — Redemption of stock.
- 3844. — Investment of surplus.
- 3845. — Evidence.
- 3850. Personal holding companies.
- 3850.1. — In general.
- 3851. — Constitutional and statutory provisions.
- 3852. — Rules and regulations.
- 3853. — Corporations constituting personal holding companies in general.
- 3854. — Nature and source of income.
- 3855. — Stock ownership.
- 3856. — Personal holding company income.
- 3857. — Deductions and credits.
- 3858. — Evidence.

220. INTERNAL REVENUE**8. CONSOLIDATED RETURNS.**

- 3865. In general.
- 3866. Constitutional and statutory provisions.
- 3867. Rules and regulations.
- 3868. Purpose of consolidated returns.
- 3869. Election as to consolidated or separate return.
- 3870. Corporations permitted to file consolidated returns.
- 3871. What are affiliated corporations in general.
- 3872. Control of corporation.
- 3873. Affiliation and returns for part of year.
- 3874. Termination of affiliation.
- 3875. Form and requisites of return.
- 3876. False or fraudulent returns.
- 3877. Intercompany transactions.
- 3878. Separate returns.
- 3879. Tax liability of affiliates; apportionment.
- 3880. Evidence.

**(O) SMALL BUSINESS CORPORATIONS
(SUBCHAPTER S CORPORATIONS).**

- 3885. In general.
- 3886. Constitutional and statutory provisions.
- 3887. Rules and regulations.
- 3888. Eligibility for treatment as small business corporation.
- 3888.1. — In general.
- 3889. — Membership in affiliated group.
- 3890. — Number and type of stockholders.
- 3891. — Classes of stock.
- 3892. — Income; passive investment income.
- 3893. Election.
- 3893.1. — In general.
- 3894. — Time of election.
- 3895. — Loss, termination or revocation.
- 3896. Income taxable to stockholders; undistributed income.
- 3897. Losses allowed to stockholders.
- 3897.1. — In general.
- 3898. — Limitation to basis in stock or indebtedness.
- 3899. Distributions to stockholders.
- 3899.1. — In general.
- 3900. — Previously taxed undistributed income.

V. INCOME TAXES.(Cont'd)

- 3901. — Source of distribution; earnings and profits.
- 3902. Capital gains.
- 3903. Evidence.

**(P) PARTNERSHIPS, JOINT VENTURES,
AND SIMILAR ORGANIZATIONS.**

- 3910. In general.
- 3911. Constitutional and statutory provisions.
- 3912. Rules and regulations.
- 3913. Creation and existence.
- 3914. Who are partners or venturers.
- 3914.1. — In general.
- 3915. — Interests created by purchase or gift.
- 3916. Contributions in exchange for interests in partnership or venture.
- 3916.1. — In general.
- 3917. — Property.
- 3918. — Services.
- 3919. Organization or syndication fees.
- 3920. Income and losses of partnership or venture.
- 3921. Partners' or venturers' distributive shares.
- 3922. — In general.
- 3923. — Sale or exchange of property.
- 3924. — Allocation of income and losses.
- 3925. — Period when taxable; accrual.
- 3926. Family partnerships.
- 3927. Transactions between partners and partnerships.
- 3928. Current distributions.
- 3928.1. — In general.
- 3929. — Decrease in or assumption of partners' or venturers' liabilities.
- 3930. Retirement, withdrawal or death of partners.
- 3930.1. — In general.
- 3931. — Unrealized receivables and inventory.
- 3932. — Goodwill.
- 3933. Transfer of partnership interest.
- 3933.1. — In general.
- 3934. — Assumption of liabilities by transferee.
- 3935. — Unrealized receivables and inventory.

220. INTERNAL REVENUE**V. INCOME TAXES.(Cont'd)**

- 3936. Abandonment of interest in partnership or venture.
- 3937. Liquidation or termination of partnership or venture.
- 3938. Basis of property of partnership or venture.
- 3938.1. — In general.
- 3939. — Adjustment following distribution or change in membership.
- 3940. — Allocation of basis.
- 3941. Basis of interest in partnership or venture.
- 3941.1. — In general.
- 3942. — Liabilities incurred.
- 3943. Returns.
- 3944. Evidence.

(Q) BANKS.

- 3950. In general.
- 3951. Constitutional and statutory provisions.
- 3952. Rules and regulations.
- 3953. Organizations constituting banks.
- 3954. Common trust funds.
- 3955. Losses and bad debts; reserves.
- 3956. Mutual and cooperative banks; savings and loan associations.
- 3957. Reserves.
- 3958. Dividends.
- 3959. Evidence.

(R) INSURANCE COMPANIES.

- 3965. In general.
- 3966. Constitutional and statutory provisions.
- 3967. Rules and regulations.
- 3968. Life insurance companies.
- 3968.1. — In general.
- 3969. — Organizations constituting life insurance companies.
- 3970. — Investment income and expenses.
- 3971. — Assets.
- 3972. — Interest.
- 3973. — Gain or loss from operations.
- 3974. — Premiums.
- 3975. — Reserves.
- 3976. — Dividends and other distributions.
- 3977. Casualty, title and other non-life insurance companies.
- 3978. Mutual insurance companies.

V. INCOME TAXES.(Cont'd)

- 3979. Reinsurance.
- 3980. Evidence.

(S) COOPERATIVES.

- 3985. In general.
- 3986. Constitutional and statutory provisions; rules and regulations.
- 3987. Patronage dividends.
- 3988. Evidence.

(T) CERTAIN OTHER ORGANIZATIONS.

- 3995. In general.
- 3996. Regulated investment companies.
- 3997. Real estate investment trusts.
- 3998. Terminal railroad companies.

(U) ESTATES, TRUSTS, AND BENEFICIARIES.

- 4000. In general.
- 4001. Constitutional and statutory provisions.
- 4002. Rules and regulations.
- 4003. Arrangements constituting trusts or fiduciary relationships.
- 4003.1. — In general.
- 4004. — Life estates.
- 4005. Taxation of estates and trusts.
- 4006. — In general.
- 4007. — Income subject to tax.
- 4008. — Income accumulated or held for future distribution.
- 4009. — Discretion to accumulate or distribute income.
- 4010. — Income earned during administration.
- 4011. — Gain on property transferred to trust at less than market value.
- 4012. — Deductions in general.
- 4013. — Distributions to beneficiaries.
- 4014. — Charitable contributions.
- 4015. Taxation of beneficiaries.
- 4016. — In general.
- 4017. — Income subject to tax.
- 4018. — Distributable income.
- 4019. — Distribution of previous accumulations; throw-back rule.
- 4020. — Separate shares or trusts.
- 4021. — Time of distribution.
- 4022. — Deductions.

220. INTERNAL REVENUE**V. INCOME TAXES.(Cont'd)**

- 4023. Attribution of trust income, deductions or credits to grantors or others.
- 4024. In general.
- 4025. Control or dominion.
- 4026. — Reversionary interests.
- 4027. — Power of revocation.
- 4028. — Income for benefit of grantor; satisfaction of obligation of grantor.
- 4029. — Persons other than grantors; life tenants.
- 4030. Receivers, trustees in bankruptcy or assignees.
- 4031. Evidence.

(V) INCOME IN RESPECT OF DECEDENT.

- 4035. In general.
- 4036. Constitutional and statutory provisions; rules and regulations.
- 4037. Payments constituting income in respect of a decedent.
- 4038. Deductions.
- 4039. Evidence.

(W) EXEMPT ORGANIZATIONS.

- 4045. In general.
- 4046. Constitutional and statutory provisions.
- 4047. Rules and regulations.
- 4048. Purposes and activities of organization.
- 4049. Business and commercial activities.
- 4050. Financial and investment activities.
- 4051. Accumulations of income.
- 4052. Incidence of benefits.
- 4053. Educational and scientific organizations.
- 4054. Religious institutions.
- 4055. Business leagues, chambers of commerce, real estate boards and similar organizations.
- 4056. Cemetery companies.
- 4057. Civic leagues and other organizations for the promotion of social welfare.
- 4058. Clubs and social organizations.
- 4059. Cooperatives.
- 4060. Credit unions, savings and loan associations and mutual savings banks.
- 4061. Fraternal beneficiary societies.
- 4062. Hospitals and hospital service organizations.
- 4063. Private foundations.

V. INCOME TAXES.(Cont'd)

- 4064. Political organizations.
- 4065. Corporations holding title to property of exempt organizations.
- 4066. Organizations supporting exempt organizations.
- 4067. Feeder organizations.
- 4068. Unrelated business income.
- 4069. Determination of exempt status in general.
- 4070. Revocation of exemptions.
- 4071. Evidence.

(X) INCOME FROM WITHIN AND WITHOUT THE UNITED STATES.**1. INCOME OF NONCITIZENS OR NONRESIDENTS.**

- 4080. In general.
- 4081. Constitutional and statutory provisions.
- 4082. Rules and regulations.
- 4083. Aliens.
- 4084. Foreign corporations.
- 4085. Treaties and conventions.
- 4086. Source of income.
- 4087. Evidence.

2. INCOME FROM SOURCES WITHOUT THE UNITED STATES.

- 4095. In general.
- 4096. Constitutional and statutory provisions.
- 4097. Rules and regulations.
- 4098. Foreign tax credit.
- 4099. — In general.
- 4100. — Credits to corporations.
- 4101. — Payments by subsidiaries.
- 4102. — Taxes for which credit may be taken.
- 4103. — Time when allowable.
- 4104. — Carryback and carryover.
- 4105. — Amount of credit; limitation.
- 4106. International boycotts.
- 4107. Earned income of citizens or residents of the United States.
- 4108. — In general.
- 4109. — Earned income.
- 4110. — Residence or presence in foreign country.
- 4111. — Residence in camp or hardship area.
- 4112. — Source of income in general.

220. INTERNAL REVENUE**V. INCOME TAXES.**(Cont'd)

- 4113. — Payment by United States or agency thereof.
- 4114. — Partnership income.
- 4115. — Allocation between domestic and foreign sources.
- 4116. — Expenses of living abroad.
- 4117. Western Hemisphere Trade Corporations.
- 4118. Domestic International Sales Corporations; Foreign Sales Corporations.
- 4119. Controlled foreign corporations.
- 4120. Foreign personal holding companies.
- 4121. Income from sources within possessions, Guam, Puerto Rico or the Virgin Islands.
- 4122. Evidence.

VI. EXCESS PROFITS AND WAR PROFITS TAXES.

- 4130. In general.
- 4131. Constitutional and statutory provisions.
- 4132. Rules and regulations.
- 4133. Invested capital.
- 4134. Deductions.
- 4135. Persons liable.
- 4136. Evidence.

VII. ESTATE TAXES.**(A) IN GENERAL.**

- 4140. In general.
- 4141. Nature of tax.
- 4142. Time when liability accrues.

(B) ESTATES OF CITIZENS OR RESIDENTS.

Excludes persons liable for taxes found to be due and mode of payment, see §4810 et seq., particularly §4818-4821, 4824 and 4830.

- 4145. In general.
- 4146. Constitutional and statutory provisions.
- 4147. Rules and regulations.
- 4148. Citizens and residents.
- 4149. Gross estate, inclusions and exclusions.
- 4149.10. — In general.
- 4151. — Decedent's interest at time of death in general.
- 4152. — Dower or curtesy and statutory substitutes.
- 4153. — Joint or community interests.
 - (1). In general.

VII. ESTATE TAXES.(Cont'd)

- (2). Interests of spouses.
- 4154. — Reciprocal dispositions.
- 4155. — Life insurance.
- 4157. — Annuities.
- 4157.10. — Powers of appointment.
 - (1). In general.
 - (2). Ability to exercise; incompetency of holder.
 - (3). Limits on exercise; ascertainable standard.
 - (4). Relinquishment or lapse of power.
- 4159. — Property transferred during decedent's lifetime.
 - (1). In general.
 - (2). Gifts in contemplation of or within three years of death.
 - (3). Retained interest, transfers with.
 - (4). Transfers intended to take effect at death.
 - (5). Reversionary interests.
 - (6). Revocable transfers.
 - (7). Bona fide sales for adequate consideration.
- 4168. Deductions.
- 4168.10. — In general.
- 4169. — Marital deduction.
 - (1). In general.
 - (2). Passage of interest to spouse.
 - (3). Transfers other than by will; election against will; will contests and settlements thereof.
 - (4). Life estates and terminable interests.
 - (5). Value of interest; effect of tax payments.
- 4171. — Taxes.
- 4172. — Transfers for public, charitable or religious uses.
 - (1). In general.
 - (2). Recipient and purpose of gift.
 - (3). Conditional or contingent transfers; certainty.
 - (4). Remainder interests in general; split interests.
 - (5). Power to invade corpus or divert gift; ascertainable standard or value.
 - (6). Amount; taxes payable from bequest.

220. INTERNAL REVENUE**VII. ESTATE TAXES.(Cont'd)**

- (7). Reformation or modification.
- 4177. — Funeral and administrative expenses.
- 4177.10. — Claims against estate; indebtedness.
 - (1). In general.
 - (2). Enforceability of obligation.
 - (3). Consideration.
 - (4). Intrafamily transactions.
 - (5). Claims by or on behalf of former spouse.
 - (6). Gift taxes.
- 4177.20. Disclaimers.
- 4182. Credits.
 - 4182.10. — In general.
 - 4182.20. — Taxes.
 - (1). In general.
 - (2). Federal estate taxes on prior transfers.
- 4182.30. — Unified credit.
- 4183. Valuation.

Excludes value of reversionary interests, see ¶4159(5) and value of interest passing to spouse for purpose of marital deduction, see ¶4169(5).

 - 4183.10. — In general.
- 4184. — Corporate securities.
 - 4184.10. — Farm and other qualified use property.
 - 4184.20. — Time of valuation; alternate valuation.
- 4185. Evidence.

Excludes presumption that gift is in contemplation of death, see ¶4159(2).

(C) ESTATES OF NONRESIDENTS NOT CITIZENS OF THE UNITED STATES.

- 4190. In general.
- 4191. Constitutional and statutory provisions; rules and regulations.
- 4192. Property within the United States.
- 4193. Property without the United States.
- 4194. Deductions.
- 4195. Evidence.

VIII. GIFT TAXES.

- 4200. In general.
- 4201. Constitutional and statutory provisions.
- 4202. Rules and regulations.
- 4203.10. Taxable transfers or gifts.
- 4203.20. — In general.

VIII. GIFT TAXES.(Cont'd)

- 4203.30. — Transfers for consideration or in ordinary course of business.
- 4203.40. — Loans and interest.
- 4203.50. — Retained interests.
- 4204. — Transfers to trusts.
- 4205. — Exercise or release of powers.
 - 4205.10. — Disclaimers.
- 4206. Exclusions.
 - 4206.10. — In general; annual exclusion.
 - 4206.20. — Present or future interest.
 - 4206.30. — Transfers for benefit of minors.
- 4207. Deductions.
- 4207.10. Unified credit.
- 4208. Value of gifts.
- 4209. Evidence.

IX. GENERATION SKIPPING TRANSFER TAXES.

- 4220. In general.
- 4221. Constitutional and statutory provisions.
- 4222. Rules and regulations.
- 4223. Nature of tax.
- 4224. Transfers taxable.
- 4225. Deductions.
- 4226. Credits.
- 4227. Value of property.
- 4228. Evidence.

X. OCCUPATION OR BUSINESS TAXES.

- 4240. In general.
- 4241. Constitutional and statutory provisions; rules and regulations.
- 4242. Nature of tax.
- 4243. Business or occupation in general.
- 4244. Distillers, liquor dealers, brewers, rectifiers and still manufacturers.
- 4245. Insurance.
- 4246. Wagering and slot machines.
- 4247. Revenue stamps.
- 4248. Evidence.

XI. CORPORATION EXCISE TAXES.

- 4260. In general.
- 4261. Constitutional and statutory provisions; rules and regulations.
- 4262. Nature of tax.

220. INTERNAL REVENUE**XI. CORPORATION EXCISE TAXES.(Cont'd)**

- 4263. Corporations subject to tax.
- 4264. Evidence.

XII. EXCISE TAXES ON FOUNDATIONS AND TRUSTS.

- 4270. In general.
- 4271. Constitutional and statutory provisions.
- 4272. Rules and regulations.
- 4273. Nature of tax.
- 4274. Organizations subject to tax.
- 4275. Investment income.
- 4276. Self-dealing.
- 4277. Undistributed income.
- 4278. Excess business holdings.
- 4279. Investments jeopardizing charitable purposes.
- 4280. Taxable expenditures.
- 4281. Black lung benefit trusts.
- 4282. Real estate investment trusts.
- 4283. Persons liable.
- 4284. Foreign organizations.
- 4285. Evidence.

XIII. EXCISE TAXES ON PENSION, PROFIT-SHARING AND STOCK BONUS PLANS.

- 4290. In general.
- 4291. Constitutional and statutory provisions.
- 4292. Rules and regulations.
- 4293. Nature of tax.
- 4294. Funding deficiencies.
- 4295. Excess contributions.
- 4296. Improper accumulations.
- 4297. Prohibited transactions.
- 4298. Evidence.

XIV. TAXES ON SPECIFIC ARTICLES AND TRANSACTIONS.**(A) IN GENERAL.**

- 4305. In general.
- 4306. Constitutional and statutory provisions.
- 4307. Rules and regulations.
- 4308. Admissions; Cabarets.
- 4309. Acquisition of foreign stock or debt obligations; interest equalization.
- 4310. Dues.
- 4311. Firearms and destructive devices.
- 4312. Fuels.
- 4313. Highway usage.

XIV. TAXES ON SPECIFIC ARTICLES AND TRANSACTIONS.(Cont'd)

- 4314. Liquors.
- 4314.1. — In general.
- 4315. — Distilled spirits.
- 4316. — Fermented liquors.
- 4317. — Wines.
- 4318. Narcotics.
- 4319. Retail sales.
- 4320. Wagers and lotteries.
- 4321. Evidence.

(B) MANUFACTURERS' AND PRODUCERS' EXCISE TAXES.

- 4325. In general.
- 4326. Constitutional and statutory provisions.
- 4327. Rules and regulations.
- 4328. Nature of tax.
- 4329. Subjects of taxation in general.
- 4330. Automobiles and parts.
- 4331. Coal.
- 4332. Firearms and destructive devices.
- 4333. Jewelry.
- 4334. Petroleum products.
- 4335. Sporting goods.
- 4336. Tires and inner tubes.
- 4337. Toilet preparations.
- 4338. Windfall profits from oil.
- 4339. Evidence.

(C) TRANSPORTATION AND COMMUNICATION TAXES.

- 4345. In general.
- 4346. Constitutional and statutory provisions; rules and regulations.
- 4347. Air transportation.
- 4348. Pipelines.
- 4349. Telecommunications.
- 4350. Evidence.

(D) EMPLOYMENT TAXES.

- 4351. In general.
- 4352. Constitutional and statutory provisions.
- 4353. Rules and regulations.
- 4354. Nature of tax.
- 4355. Construction in general.
- 4356. Employer-employee relationship.
- 4356.1. — In general.
- 4357. — Tests of relationship.

220. INTERNAL REVENUE**XIV. TAXES ON SPECIFIC ARTICLES
AND TRANSACTIONS.(Cont'd)**

- 4358. — Existence or nonexistence of relationship in general.
- 4359. Employees, who are.
- 4360. Employee representatives, who are.
- 4361. Employers, who are.
- 4361.1. — In general.
- 4362. — Carriers by railroad and auxiliaries, who are.
- 4363. Independent contractors, who are.
- 4364. Employments included in general.
- 4365. Employments excepted.
- 4365.1. — In general.
- 4366. — Agricultural.
- 4367. — Casual.
- 4368. — Charitable.
- 4369. — Educational.
- 4370. — Governmental.
- 4371. — Religious.
- 4372. — Scientific.
- 4373. — Employment on vessels.
- 4374. Taxes in general.
- 4375. On employee representatives.
- 4376. On employers in general.
- 4377. On employees in general.
- 4378. On carriers by railroad and their auxiliaries.
- 4378.1. — In general.
- 4379. — On employees of.
- 4380. Credits.
- 4381. Self-employment.
- 4382. Evidence.

XV. DOCUMENTARY STAMP TAXES.

- 4390. In general.
- 4391. Constitutional and statutory provisions; rules and regulations.
- 4392. Instruments subject to tax in general.
- 4393. Bills of lading and shipping receipts.
- 4394. Bonds.
- 4395. Capital stock.
- 4396. Certificates.
- 4397. Charter parties.
- 4398. Checks, drafts, and orders for payment of money.
- 4399. Corporate securities.

XV. DOCUMENTARY STAMP TAXES.(Cont'd)

- 4400. Deeds and instruments selling, granting, transferring or assigning realty or interest therein.
- 4401. Insurance policies.
- 4402. Powers of attorney.
- 4403. Sales and transfers of corporate securities.
- 4404. Sales and transfers of corporate shares.
- 4405. Warehouse receipts.
- 4406. Use of unstamped instrument.
- 4406.1. — In general.
- 4407. — Admissibility to record.
- 4408. — Admissibility in evidence.
- 4409. Evidence.

XVI. BONDS UNDER REVENUE LAWS.**(A) IN GENERAL.**

- 4415. In general.
- 4416. Nature, requisites, and validity.
- 4417. Construction and effect.
- 4418. Discharge and release.

(B) ACTIONS ON BONDS.

- 4420. In general.
- 4421. Right to sue and parties.
- 4422. Defenses.
- 4423. Time to sue, limitations, and laches.
- 4424. Pleading.
- 4425. Evidence.
- 4426. Trial.
- 4427. Judgment.

**XVII. BONDED WAREHOUSES
AND GOODS IN BOND.**

- 4430. In general.
- 4431. Distillery warehouses.
- 4431.1. — In general.
- 4432. — Withdrawal from warehouse.
- 4433. — Warehousemen's bonds, and liability thereon.
- 4434. — Transportation in bond.

**XVIII. ADMINISTRATION OF
TAXES GENERALLY.****(A) IN GENERAL.**

- 4440. In general.
- 4441. Prevention and detection of violations of revenue laws in general.

220. INTERNAL REVENUE**XVIII. ADMINISTRATION OF TAXES
GENERALLY.(Cont'd)**

- 4442. Informers, tax ferrets and rewards.
- 4443. Investigations, audits and conferences.
- 4444. Regulation of persons representing tax-payers.
- 4444.1. — In general.
- 4445. — Disbarment or other discipline.
- 4446. — Tax return preparers.
- 4447. — Proceedings.

(B) REVENUE OFFICERS AND AGENTS.

- 4450. In general.
- 4451. Appointment.
- 4452. Promotion, transfer and assignment.
- 4453. Compensation.
- 4454. Resignation and removal, suspension or other discipline.
- 4454.1. — In general.
- 4455. — Proceedings.
- 4456. Wrongful discharge or discipline.
- 4457. Liability for misconduct.
Liability for constitutional violations, see UNITED STATES V(D)2.
- 4458. Particular officers.
- 4459. Commissioner of internal revenue.
- 4460. Collectors.
- 4461. Deputy collectors.
- 4462. Agents.
- 4462.1. — In general.
- 4463. — Resignation and removal, suspension or other discipline.
- 4464. — Liability for misconduct.
Liability for constitutional violations, see UNITED STATES V(D)2.

XIX. RETURNS AND REPORTS.

- 4470. In general.
- 4471. Constitutional and statutory provisions; rules and regulations.
- 4472. Necessity of return and effect of failure to make.
- 4473. Persons required to make.
- 4474. Time for making.
- 4475. Election of taxpayer.
- 4476. Period included.
- 4477. Form and sufficiency in general.
- 4478. Verification.
- 4479. Amendment or change.
- 4480. False or fraudulent returns or reports.

XIX. RETURNS AND REPORTS.(Cont'd)

- 4481. Joint or separate returns of husband and wife.
- 4482. Inspection and disclosure.
- 4483. Evidence.

**XX. EXAMINATION OF PERSONS
AND RECORDS.**

- 4490. In general.
- 4491. Constitutional and statutory provisions.
- 4492. Rules and regulations.
- 4493. Grounds and purposes.
- 4494. Civil or criminal investigative purposes; recommendation of prosecution.
- 4495. Subjects and scope of examination.
- 4496. Relevance and materiality.
- 4497. Corporate records and officers.
- 4498. Periods which may be subject of inquiry.
- 4499. Examination of third persons and their records.
- 4500. Banks and bank records.
- 4501. Accountants, attorneys and their records.
- 4502. Work product privilege; tax practitioner privilege.
- 4503. Successive or unnecessary examinations.
- 4504. Proceedings in general.
- 4505. Requisites of summons or subpoena; issuance and service.
- 4506. Notice.
- 4507. Quashing or vacating summons or subpoena.
- 4508. Enforcement.
- 4509. Application for enforcement.
- 4510. Parties; intervention.
- 4511. Evidence and affidavits in general.
- 4512. Presumptions and burden of proof.
- 4513. Weight and sufficiency.
- 4514. Hearing and determination; findings.
- 4515. Orders.
- 4516. Compliance and failure to comply; contempt.
- 4517. Review.
- 4518. Use of information obtained.

220. INTERNAL REVENUE**XXI. ASSESSMENT OF TAXES.****(A) IN GENERAL.**

- 4520. In general.
- 4521. Constitutional and statutory provisions; rules and regulations.
- 4522. Powers and duties of commissioner in general.
- 4523. Powers and duties of assessors in general.
- 4524. Powers of court.
- 4525. Necessity of assessment.
- 4526. Income earned in different tax periods.
- 4527. Persons against whom made.
- 4528. Computation in general.
- 4529. Income and profits taxes, computation in general.
- 4530. Net worth increase and expenditures.
- 4530.1. — In general.
- 4531. — Propriety of resorting to method.
- 4532. Determination of invested capital.
- 4533. Valuation of property.
- 4534. Valuation of corporate stock.
- 4535. Determination of deductions and credits.
- 4535.1. — In general.
- 4536. — Expenses.
- 4537. — Depreciation, depletion, obsolescence, or exhaustion.
- 4538. — Losses.
- 4539. Items included in single assessment.
- 4540. Correction of assessment, reassessment, or additional assessment.
- 4541. Notice of assessment.
- 4542. Notice of deficiency tax.
- 4542.1. — In general.
- 4543. — Necessity, and effect of failure to give.
- 4544. — Persons notified.
- 4545. — Requisites and sufficiency.
- 4546. — Time for giving.
- 4547. — Service.
- 4548. Jeopardy and termination assessments.
- 4548.1. — In general.
- 4549. — Nature and purpose.
- 4550. — Power and discretion to impose.
- 4551. — Grounds.
- 4552. — Procedure in general.
- 4553. — Notice.
- 4554. Special assessments.

XXI. ASSESSMENT OF TAXES.(Cont'd)

- 4555. Finality and conclusiveness.
- 4556. Presumption of regularity.
- 4557. Collateral attack.
- 4558. Record of assessments.
- 4559. Questions of law or fact.
- 4560. Estoppels.

(B) TIME FOR ASSESSMENT AND LIMITATIONS.**1. IN GENERAL.**

- 4565. In general.
- 4566. Constitutional and statutory provisions; rules and regulations.
- 4567. Persons entitled to rely on limitations.
- 4568. Limitations applicable.
- 4569. Computation of period of limitations in general.
- 4570. Commencement of period of limitations.
- 4571. Request for prompt assessment.
- 4572. Effect of erroneous, false, or fraudulent returns; failure to file return.
- 4573. Suspension of limitations.
- 4574. Operation and effect of limitations.

2. WAIVERS AND CONSENTS.

- 4575. In general.
- 4576. Constitutional and statutory provisions; rules and regulations.
- 4577. Nature.
- 4578. Acts constituting.
- 4579. Persons authorized to execute.
- 4580. Form and contents in general.
- 4581. Requisites and validity in general.
- 4582. Validity of assent.
- 4583. Consideration.
- 4584. Time of making.
- 4584.1. — In general.
- 4585. — After bar by limitations.
- 4586. Approval by commissioner.
- 4586.1. — In general.
- 4587. — Signature by subordinates.
- 4588. Estoppel.
- 4589. Construction and operation.
- 4589.1. — In general.
- 4590. — Statutes as part of waivers.
- 4591. — Duration of extension.
- 4592. — Taxes included.
- 4593. Successive waivers.

220. INTERNAL REVENUE**(C) EVIDENCE.**

- 4615. In general.
- 4616. Presumptions and burden of proof.
- 4616.1. — In general.
- 4617. — Value.
- 4618. — Corporate stock.
- 4619. Admissibility.
- 4619.1. — In general.
- 4620. — Value.
- 4621. — Corporate stock.
- 4622. Weight and sufficiency.
- 4623. — In general.
- 4624. — Fraud.
- 4625. — Limitations and waivers.

(D) RELIEF FROM ASSESSMENT.

- 4635. In general.
- 4636. Abatement.
- 4637. Injunction against assessment.
- 4638. Jeopardy and termination assessments.

(E) REVIEW BY TAX COURT.

- 4645. Nature, purpose, and proceedings in general.
Establishment and organization of Tax Court, see FEDERAL COURTS 2005.
- 4646. Rules of practice.
- 4647. Jurisdiction.
- 4648. Persons entitled to apply for review.
- 4649. Determinations reviewable in general.
- 4650. Presentation of grounds of review.
- 4651. Time of taking proceedings.
- 4652. Petitions and other pleadings.
- 4653. Effect of appeal.
- 4654. Dismissal or abatement.
- 4655. Trial or hearing.
- 4656. Scope and extent of review.
- 4657. Presumptions and burden of proof as to findings of commissioner.
- 4658. Questions of law.
- 4659. Questions of fact.
- 4660. Findings.
- 4660.1. — In general.
- 4661. — Necessity, and effect of failure to make.
- 4662. — Sufficiency.
- 4663. — Construction and operation.
- 4664. Decisions and orders.
- 4664.1. — In general.
- 4665. — Construction and operation.

XXI. ASSESSMENT OF TAXES.(Cont'd)

- 4666. Reconsideration.
- 4666.1. — In general.
- 4667. — Discretion of Tax Court.
- 4668. Report.

(F) REVIEW OF TAX COURT DECISIONS.**1. IN GENERAL.**

- 4675. In general.
- 4676. Rules of Court.
- 4677. Jurisdiction and venue.
- 4678. Nature and form of remedy.
- 4679. Hearing and rehearing.
- 4680. Harmless error.

2. DECISIONS REVIEWABLE, RIGHT OF REVIEW, AND PRESENTATION OF GROUNDS OF REVIEW.

- 4685. Decisions reviewable.
- 4686. Right of review and parties.
- 4687. Presentation and reservation of grounds of review.

3. PROCEEDINGS FOR REVIEW.

- 4690. In general.
- 4691. Petition for review.
- 4692. Record and proceedings not in record.
- 4692.1. — In general.
- 4693. — Defects, objections, amendment, and correction.
- 4694. — Opinion of Tax Court.
- 4695. — Questions presented for review.
- 4696. — Effect of omission of evidence.
- 4697. Assignments of error.

4. SCOPE AND EXTENT OF REVIEW.

- 4700. In general.
- 4701. Moot questions.
- 4702. Theory and grounds of determination by Tax Court or Commissioner.
- 4703. Review dependent on findings.
- 4704. Parties entitled to allege error.
- 4705. Trial de novo.
- 4706. Review dependent on whether questions are of law or of fact.
- 4706.1. — In general.
- 4707. — What are questions of law or fact.
- 4708. — Mixed questions of law and fact.

220. INTERNAL REVENUE**5. DISCRETION OF TAX COURT
OR OF COMMISSIONER.**

- 4710. In general.
- 4711. Accounting and returns.
- 4712. Computation in general.
- 4713. Deductions.
- 4714. Special assessment.

6. PRESUMPTIONS.

- 4715. In general.
- 4716. Assessment in general.
- 4717. Effect of evidence.
- 4718. Incomes taxable.
- 4719. Deductions.
- 4720. Value of property.
- 4721. Burden of showing error.
- 4721.1. — In general.
- 4722. — Incomes taxable.
- 4723. — Deductions.
- 4724. — Value of property.
- 4725. — Persons liable.
- 4726. Rebuttal of presumption.

7. QUESTIONS OF FACT AND FINDINGS.

- 4730. In general.
- 4731. Conclusiveness in general.
- 4732. Sufficiency of evidence.
- 4733. Weight of evidence.
- 4734. Findings contrary to opinion of reviewing tribunal.
- 4735. Stipulated facts.
- 4736. Undisputed evidence.
- 4737. Persons liable for payment.
- 4738. Incomes taxable.
- 4738.1. — In general.
- 4739. — Salaries, wages or compensation.
- 4740. — Dividends received.
- 4741. — Capital and capital increase.
- 4742. — Gains and profits from sales and exchanges.
- 4743. Deductions.
- 4743.1. — In general.
- 4744. — Expenses in general.
- 4745. — Compensation for services.
- 4746. — Losses in general.
- 4747. — Bad debts and worthless securities.
- 4748. — Depreciation, depletion, obsolescence, and exhaustion.
- 4749. Value.

XXI. ASSESSMENT OF TAXES.(Cont'd)

- 4750. Persons, corporations, and associations liable.
- 4751. Special assessment.
- 4752. Conflicting evidence.

8. DETERMINATION AND DISPOSITION OF CAUSE.

- 4755. In general.
- 4756. Remand.
- 4757. Proceedings after remand.

**XXII. COMPROMISES AND CLOSING
AGREEMENTS.**

- 4760. Compromises.
- 4761. Closing agreements.
- 4761.1. — In general.
- 4762. — Validity of assent.

XXIII. LIENS.

- 4765. In general.
- 4766. Constitutional and statutory provisions; rules and regulations.
- 4767. What law governs.
- 4768. Creation.
- 4768.1. — In general.
- 4769. — Assessment.
- 4770. — Notice or demand.
- 4771. Property subject to lien.
- 4771.1. — In general.
- 4772. — Nature and situation of property in general.
- 4773. — Contingent rights; after-acquired property.
- 4774. — Contract rights.
- 4775. — Taxpayer's interest in general.
- 4776. — Cotenancy and partnership property.
- 4777. — Property subject to mortgage or other security interest.
- 4778. — Trust property.
- 4779. — Insurance.
- 4780. Accrual.
- 4781. Priority in general.
- 4782. Particular claims and liens, priority.
- 4782.1. — In general.
- 4783. — Assignments and other transfers.
- 4784. — Judicial proceedings, rights acquired by.

220. INTERNAL REVENUE**XXIII. LIENS.(Cont'd)**

- 4785. — Mechanics' liens and other claims arising out of construction contracts.
- 4786. — Mortgages, pledges and similar security transactions.
- 4787. — Taxes and other governmental or municipal claims.
- 4788. Notice or record of federal lien affecting priority.
- 4788.1. — In general.
- 4789. — Assignments and other transfers.
- 4790. — Judicial proceedings, rights acquired by.
- 4791. — Mechanics' liens and other claims arising out of construction contracts.
- 4792. — Mortgages, pledges and similar security transactions.
- 4793. Duration.
- 4794. Actions to enforce lien.
- 4794.1. — In general.
- 4795. — Defenses.
- 4796. — Time to sue and limitations.
- 4797. — Parties.
- 4798. — Jurisdiction, venue, and process.
- 4799. — Evidence.
- 4800. — Judgment and review.
- 4801. — Receivers.
- 4802. — Sale of property.
- 4803. Extinguishment.
- 4803.1. — In general.
- 4804. — Judicial cancellation and removal of cloud.
- 4805. — Transfer of title.
- 4806. — Release, waiver, and estoppel.

XXIV. PAYMENT.

- 4810. In general.
- 4811. Constitutional and statutory provisions; rules and regulations.
- 4812. Duty and necessity of payment in general.
- 4813. Notice and demand for payment.
- 4814. Who may pay.
- 4815. Persons who may be required to pay.
- 4815.1. — In general.
- 4816. — Debtors of persons primarily liable.
- 4817. — Transferees in general.
- 4818. — Estate and gift taxes.

XXIV. PAYMENT.(Cont'd)

- 4819. — Executors and administrators.
- 4820. — Recipients of bequests, devises and gifts.
- 4821. — Apportionment.
- 4822. Property or fund from which payable.
- 4823. Agreements for payment.
- 4824. Testamentary directions concerning payment.
- 4825. Who may receive payment.
- 4826. Place for payment.
- 4827. Time for payment.
- 4828. Mode and medium of payment.
- 4828.1. — In general.
- 4829. — By set off of prior overpayments.
- 4829.10. — Equitable recoupment.
- 4830. — "Flower" bonds.
- 4831. Amount due, interest and fees.
- 4832. Period and taxes covered by payments; application of payments.
- 4833. Evidence of payment.
- 4834. Operation and effect of payment in general.
- 4835. Rights resulting from payment by third persons or by fewer than all persons liable.
- 4836. Tender of payment and waiver thereof.

XXV. COLLECTION.**(A) IN GENERAL.**

- 4840. In general.
- 4841. Constitutional and statutory provisions; rules and regulations.
- 4842. What law governs.
- 4843. Powers and duties of officers in general.
- 4844. Compromise and settlement of liability.
- 4845. Collection by application of overpayments.
- 4846. Collection by corporations and others.
- 4847. — In general.
- 4848. — Income tax in general.
- 4849. — Withholding from wages.
- 4850. Rights and liabilities as to taxes uncollected.

(B) LEVY OR DISTRAINT.

- 4855. In general.
- 4856. Power and duty to distrain.

220. INTERNAL REVENUE**XXV. COLLECTION.(Cont'd)**

- 4857. Property subject to distraint.
- 4858. Liability of third person for refusal to surrender property on which levy has been made.
- 4859. Limitations.
- 4860. Sale.
- 4861. Certificate of sale.
- 4862. Redemption.
- 4863. Tax deeds.
- 4864. Tax titles.
- 4865. Right to surplus.

XXVI. ACTIONS FOR TAXES.**(A) IN GENERAL.**

- 4870. Nature and form of remedy.
- 4871. Constitutional and statutory provisions; rules and regulations.
- 4872. Conditions precedent.
- 4873. Defenses.
- 4874. Jurisdiction and venue.

(B) TIME TO SUE AND LIMITATIONS.**1. IN GENERAL.**

- 4880. In general.
- 4881. Constitutional and statutory provisions.
- 4882. Rules and regulations.
- 4883. What law governs.
- 4884. Estoppel to rely on limitations.
- 4885. Suspension of statute.
- 4886. Actions against transferees.
- 4887. Operation and effect of statutory bar.
- 4888. Failure to obtain judgment before running of statute.

2. COMPUTATION OF PERIOD.

- 4890. Assessment.
- 4891. Return.
- 4892. Failure to make return and insufficient return.
- 4893. Fraudulent return.
- 4894. Redetermination by Tax Court.

3. WAIVER OF LIMITATIONS.

- 4895. In general.
- 4896. Requisites and validity in general.
- 4897. Waiver after running of statute.
- 4898. Construction, operation, and effect of waiver.

XXVI. ACTIONS FOR TAXES.(Cont'd)

- 4899. Waiver of period for assessment as waiver of period for collection.
- 4900. Successive waivers.
- 4901. Expiration of waiver.
- 4902. Cancellation of waiver.

(C) PARTIES.

- 4903. In general.

(D) PROCESS AND APPEARANCE.

- 4904. In general.

(E) PLEADING.

- 4905. In general.
- 4906. Complaint, declaration, or petition.
- 4907. Answer.

(F) EVIDENCE.

- 4908. In general.
- 4909. Presumptions and burden of proof.
- 4910. Admissibility.
- 4911. Weight and sufficiency.

(G) TRIAL, JUDGMENT, AND REVIEW.

- 4912. In general.

XXVII. REMEDIES FOR WRONGFUL ENFORCEMENT.**(A) IN GENERAL.**

- 4915. In general.
- 4916. Restraining collection in general.
- 4917. Constitutional and statutory provisions; rules and regulations.
- 4918. Temporary injunction.

(B) TAXES AND SUITS WITHIN STATUTORY PROHIBITION.

- 4920. In general.
- 4921. Suits by persons other than taxpayers.

(C) GROUNDS FOR INJUNCTION.**1. IN GENERAL.**

- 4925. In general.
- 4926. Hardship on taxpayer.
- 4927. Illegality of tax, misconstruction of statute, or irregular proceedings thereunder.
- 4928. Premature collection.

220. INTERNAL REVENUE**2. SPECIAL GROUNDS OF EQUITY JURISPRUDENCE AND EXCEPTIONAL CIRCUMSTANCES.**

- 4930. In general.
- 4930.10. Likelihood of prevailing; exceptional circumstances.
- 4931. Irreparable injury or inadequacy of legal or administrative remedy.
- 4932. Multiplicity of actions.

(D) PROCEEDINGS.

- 4935. In general.
- 4936. Time to sue and limitations.
- 4937. Parties, process, and appearance.
- 4938. Pleading.
- 4939. Evidence.
- 4940. Trial, judgment and review.

XXVIII. REFUNDING TAXES.**(A) IN GENERAL.**

- 4950. In general.
- 4951. Constitutional and statutory provisions.
- 4952. Rules and regulations.
- 4953. Power to refund.
- 4954. Waiver and estoppel.
- 4955. Persons entitled to refund.
- 4956. Nature, form, and exclusiveness of remedy.
- 4957. Grounds and right to refund.
- 4958. Interest.
- 4959. Effect of false or fraudulent return.
- 4960. Limitations.
- 4961. Necessity of filing claim for refund.
- 4962. Claim for refund in general.
- 4963. Nature, form, and requisites of claim in general.
- 4964. Sufficient claims.
- 4965. Insufficient claims.
- 4966. Amendment of claims.
- 4967. Waiver of defects in claims.
- 4968. Scope of inquiry and hearing.
- 4969. Allowance and payment in general.
- 4970. Effect of allowance or disallowance of claim.
- 4971. Reharing.
- 4972. Administrative and judicial review.
- 4973. Right to proceeds; interception of refunds.
- 4974. Erroneous refunds and actions to recover them.

(B) ACTIONS FOR REFUNDS.**1. IN GENERAL.**

- 4980. In general.
- 4981. Constitutional and statutory provisions.
- 4982. Rules and regulations.
- 4983. Nature, form and exclusiveness of remedy.
- 4984. Jurisdiction and venue.

2. GROUNDS OF ACTION.

- 4990. In general.
- 4991. Illegality of statute or regulation.
- 4992. Mistake of fact or law.
- 4993. Wrongful assessment or collection.
- 4994. Collection after bar by limitations.

3. CONDITIONS PRECEDENT.

- 5000. In general.
- 5001. Appeal to commissioner.
- 5002. Claim for refund.
- 5002.1. — In general.
- 5003. — Necessity.
- 5004. — Time for making.
- 5005. — Sufficiency.
- 5006. — Amendment or new claim.
- 5007. — Variance between claim and grounds of action.
- 5008. — Waiver.
- 5009. Protest.
- 5009.1. — In general.
- 5010. — Necessity of protest.
- 5011. — Voluntary or involuntary payments.
- 5012. — Sufficiency of protest.

4. DEFENSES.

- 5015. In general.
- 5016. Compromise and settlement.
- 5017. Election of remedies.
- 5018. Equitable defenses.
- 5019. False or fraudulent return.
- 5020. Payment after running of statute of limitations.
- 5020.1. — In general.
- 5021. — Waiver of limitations.
- 5022. — Claim in abatement and stay of collection.
- 5023. Payment into treasury and further disposition of payment.

220. INTERNAL REVENUE**XXVIII. REFUNDING TAXES.(Cont'd)**

5024. Set-off and counterclaim.

5025. Equitable recoupment.

5. TIME TO SUE AND LIMITATIONS.

5030. In general.

5031. Constitutional and statutory provisions; rules and regulations.

5032. Time when action may be brought.

5033. Limitations applicable.

5034. Estoppel or waiver.

5035. Extension of time and suspension of limitations.

5036. — In general.

5037. — Agreements.

5038. Account stated.

5039. Allowance of claim for refund or credit.

5040. Certificate of overpayment or overassessment.

5041. Commencement of action.

5042. Disallowance of claim.

5043. Failure to act or delay in acting on claim.

5044. Notice of disallowance of claim.

5045. Rehearing.

5046. Time of assessment.

5047. Time of payment.

5048. Time of return.

5049. Adjustment in order to mitigate effect of limitations.

6. PERSONS ENTITLED TO SUE AND PERSONS LIABLE.

5055. Persons entitled to sue.

5055.1. — In general.

5056. — Shifting burden of tax.

5057. Persons liable.

5057.1. — In general.

5058. — Certificate of probable cause.

7. PARTIES, PRELIMINARY PROCEEDINGS AND PLEADING.

5065. In general.

5066. Parties.

5067. Process and appearance.

5068. Pleading in general.

5069. Complaint.

5070. Answer.

5071. Issues, proof and variance.

8. EVIDENCE.

5075. Presumptions and burden of proof.

5076. — In general.

5077. — Limitations and waivers.

5078. — Ignorance, mistake, fraud or duress.

5079. — Overpayment.

5080. — Claims for refund.

5081. Admissibility.

5082. Weight and sufficiency.

5083. — In general.

5084. — Overpayment.

5085. — Limitations and waivers.

5086. — Fraud, duress or mistake.

5087. — Proceedings for refund.

5088. — Right to interest on refund.

9. TRIAL, JUDGMENT AND REVIEW.

5095. Trial.

5096. Judgment and relief awarded in general.

5097. Interest.

5097.1. — In general.

5098. — Dependent on statute.

5099. — Statutes and regulations applicable.

5100. — Deficiency assessments.

5101. — Special assessments.

5102. — On judgments.

5103. — Overpayment credited against taxes or other obligations.

5104. — Time from which interest runs.

5105. — Time to which interest runs.

5106. — Period for which allowed.

5107. — Rate and amount.

5108. — Persons entitled.

5109. — Necessity and sufficiency of claim for refund.

5110. — Waiver or loss of right.

5111. Review.

5111.1. — In general.

5112. — Scope of review in general.

5113. — Presumptions.

5114. — Fact questions in general.

5115. — Particular fact questions.

5116. — Harmless error.

5117. — Determination and disposition.

220. INTERNAL REVENUE**XXIX. SEARCHES AND SEIZURES.**

- 5125. In general.
- 5126. Searches under warrant.
- 5127. Searches without warrant.
- 5128. Seizures.
- 5129. Injunctions against searches and seizures.

XXX. FORFEITURES.**(A) IN GENERAL.**

- 5140. In general.
- 5141. Constitutional and statutory provisions; rules and regulations.
- 5142. Knowledge and intent.
- 5143. Effect of conviction or other punishment.
- 5144. Rights of third persons.
- 5144.1. — In general.
- 5145. — Owners in general.
- 5146. — Conditional vendors.
- 5147. — Lessors or bailors.
- 5148. — Bona fide purchasers.
- 5149. — Lienors in general.
- 5150. — Mortgagees.

(B) PROPERTY SUBJECT TO FORFEITURE AND GROUNDS THEREFOR.

- 5155. In general.
- 5156. Fraud in general.
- 5157. Confusion of goods.
- 5158. Failure to give bond and giving of false bond.
- 5159. False books.
- 5160. Instrumentalities used to conceal or remove goods with intent to defraud.
- 5161. Unmarked or unstamped goods.

(C) PROCEEDINGS AND RELIEF.

- 5165. In general.
- 5166. Statutes under which proceedings may be had.
- 5167. Nature and form of remedy.
- 5168. Custody of goods pending final hearing.
- 5169. Conditions precedent.
- 5170. Defenses.
- 5171. Discovery.
- 5172. Jurisdiction and venue.
- 5173. Parties.
- 5174. Process and appearance.

XXX. FORFEITURES. (Cont'd)

- 5175. Information or libel.
- 5176. Answer and other pleadings.
- 5177. Presumptions and burden of proof.
- 5178. Admissibility of evidence.
- 5179. Weight and sufficiency of evidence.
- 5180. Trial.
- 5181. Judgment.
- 5182. Effective date of forfeiture.
- 5183. Review.
- 5185. Disposition of forfeited goods.
- 5186. Injunctions against forfeiture proceedings.

(D) MITIGATION AND REMISSION.

- 5190. In general.
- 5191. Construction of statutes providing for remission.
- 5192. Power to remit.
- 5193. Discretion.
- 5194. Diligence and good faith.
- 5195. Evidence.

XXXI. PENALTIES AND ADDITIONS TO TAX.**(A) IN GENERAL.**

- 5200. In general.
- 5201. Constitutional and statutory provisions; rules and regulations.
- 5202. Persons liable.
- 5203. — In general.
- 5204. — Persons responsible for collection in general.
- 5205. — Corporate officers, agents or employees.
- 5206. — Stockholders.
- 5207. — Husband or wife.
- 5208. What constitutes a penalty.

(B) GROUNDS AND AMOUNT.

- 5215. In general.
- 5216. Failure to keep books.
- 5217. Failure to make returns.
- 5217.10. Frivolous returns.
- 5217.15. — In general.
- 5217.20. — Documents constituting returns.
- See also* 4477.
- 5217.25. — Absence of required information.

220. INTERNAL REVENUE**XXXI. PENALTIES AND ADDITIONS
TO TAX.(Cont'd)**

- 5217.30. — Assertion of privilege to withhold information.
- 5217.35. — Incorrect information.
- 5217.40. — Impermissible deductions, credits, exemptions or exclusions from income.
- 5217.45. — Defects in or absence of signature or verification.
- 5217.50. — Alteration of forms.
- 5217.55. — Good faith or intent.
- 5217.60. Failure to pay tax in general.
- 5217.70. Disregard of rules or regulations.
- 5218. Fraud.
- 5219. Negligence.
- 5219.10. Reasonable cause.
- 5219.20. Failure to collect or pay withholding taxes.
- 5219.21. — In general.
- 5219.25. — Willfulness.
- 5219.30. — Reasonable cause.
- 5219.40. Failure to make or insufficiency of estimated tax payments.
- 5219.50. Abusive tax shelters.
- 5219.60. Misconduct of tax preparers.
- 5219.70. Failure to surrender property subject to levy.
- 5220. Amount.

(C) ASSESSMENT.

- 5225. In general.
- 5226. Nature and form of remedy.
- 5227. Necessity for hearing.
- 5228. Defenses.
- 5229. Actions.
- 5230. Limitation of actions.
- 5231. Process, appearance, and pleading.
- 5232. Evidence.
- 5232.1. — In general.
- 5233. — Presumptions and burden of proof in general.
- 5234. — Fraud, presumptions and burden of proof.
- 5235. — Weight and sufficiency in general.
- 5236. — Fraud, sufficiency of evidence.
- 5237. Trial.
- 5238. Review.

(D) COMPROMISE.

- 5240. In general.

(E) REMISSION.

- 5241. In general.

(F) INJUNCTIONS.

- 5245. In general.

(G) ACTIONS FOR REFUND.

- 5246. In general.

XXXII. OFFENSES.**(A) IN GENERAL.**

- 5250. In general.
- 5251. Constitutional and statutory provisions.
- 5252. Alcohol and intoxicating liquors in general.
- 5253. Recovering by distillation alcohol unfit for beverage or medicinal purposes.
- 5254. Shipping liquors under wrong name.
- 5255. Stills and distilleries.
- 5256. Unlawful removal of distilled spirits.
- 5257. Stamps, offenses involving.
- 5258. Unstamped goods.
- 5259. Drugs and narcotics.
- 5260. Failure to keep books or records.
- 5261. Failure to make returns.
- 5262. Failure to pay tax.
- 5263. False returns or statements and attempts to defeat tax; evasion.
- 5263.10. — In general.
- 5263.15. — Attempts to evade or defeat tax.
- 5263.20. — Fraud and false statements.
Excludes filing false return as affirmative act of evasion, see 5263.15.
- 5263.25. — Returns, statements or documents subject to regulation.
- 5263.30. — Materiality and substantiality.
- 5263.35. — Willfulness, intent or knowledge.
- 5263.40. — Corporate returns.
- 5263.45. — Withholding exemptions.
- 5263.50. — Promotion of tax shelters.
- 5263.55. — Aiders and abettors; tax return preparers.
- 5263.60. — Advice of attorney, accountant or tax return preparer.
- 5264. Interference with officers.

220. INTERNAL REVENUE**XXXII. OFFENSES.(Cont'd)**

- 5265. Firearms and destructive devices.
- 5266. Publication of tax information.
- 5267. Refusal to give information.
- 5268. Simulation of documents.
- 5269. Offenses by officers.
- 5270. Wagering.

(B) CRIMINAL PROSECUTION.

- 5280. In general.
- 5281. Limitation of prosecutions.
- 5282. Indictment and information.
- 5282.1. — In general.
- 5283. — Alcohol and intoxicating liquors.
- 5284. — Books and records.
- 5285. — Drugs and narcotics.
- 5286. — Failure to make returns, false returns and evasion of tax.
- 5287. — Failure to pay tax.
- 5288. — Firearms and destructive devices.
- 5289. — Stamps.
- 5290. — Issues, proof and variance.
- 5291. Presumptions and burden of proof.
- 5291.1. — In general.
- 5292. — Net worth method.
- 5293. — Expenditures or bank-deposits method.
- 5294. Admissibility of evidence.
- 5295. Weight and sufficiency of evidence in general.
- 5296. Assaulting and resisting officers, weight and sufficiency.
- 5297. Evasion of taxes, weight and sufficiency.
- 5298. — In general.
- 5299. — Particular cases.
- 5300. — Motive, intent, and willfulness.
- 5301. — Failure to file return.
- 5302. — Unreported or understated income.
- 5303. — False or fraudulent returns.
- 5304. — Persons liable; corporate taxes.
- 5305. — Net worth method, in general.
- 5306. — Opening net worth.
- 5307. Offenses relating to liquors in general, weight and sufficiency.
- 5308. Offenses by liquor dealers, weight and sufficiency.

XXXII. OFFENSES.(Cont'd)

- 5309. Offenses relating to stills and distillers, weight and sufficiency.
- 5310. Trial in general.
- 5311. Questions for jury.
- 5311.1. — In general.
- 5312. — Income tax evasion in general.
- 5313. — Intent and willfulness, income tax evasion.
- 5314. — Net worth issues.
- 5315. — Liquor offenses.
- 5316. — Narcotics offenses.
- 5317. Instructions.
- 5318. Verdict.
- 5319. Judgment, sentence, punishment, and review.

XXXIII. DISPOSITION OF PROCEEDS OF PENALTIES, FORFEITURES, AND FINES.

- 5325. In general.
- 5326. Persons entitled to share in proceeds.
- 5326.1. — In general.
- 5327. — Government officers and agents.

XXXIV. COSTS AND FEES.

Excludes penalties and additions to tax, see §5200 et seq., costs in criminal prosecutions, see COSTS §284 et seq., and costs awarded pursuant to Equal Access to Justice Act, see UNITED STATES §1129.

- 5330. In general.
- 5331. Constitutional and statutory provisions.
- 5332. Awards to government.
- 5333. — In general.
- 5334. — Frivolous or meritless conduct; bad faith.
- 5335. — Particular proceedings.
- 5336. — Quashing or enforcing summonses.
- 5337. — Penalties and additions to tax, actions involving.
- 5338. — Appeals.
- 5339. — Amount.
- 5340. Awards to taxpayers.
- 5341. — In general.
- 5342. — Reasonableness or merits of government's position; bad faith.
- 5343. — Particular proceedings.
- 5344. — Quashing or enforcing summonses.
- 5345. — Refunds, actions for.

220. INTERNAL REVENUE**XXXIV. COSTS AND FEES.(Cont'd)**

5346. — Appeals.

5347. — Amount.

5348. Taxation.

5349. Evidence.

221. INTERNATIONAL LAW**SUBJECTS INCLUDED**

Customary law recognized by civilized nations as regulating their mutual relations and intercourse, more particularly in time of peace

Its sources, principles and rules, and its application in general

International organizations and tribunals

Recognition in one nation of the acts and laws of another nation, and domestic acts and laws involving foreign affairs

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Aliens' rights and disabilities, see **ALIENS, IMMIGRATION, AND CITIZENSHIP**

Comity between courts of different countries, see **COURTS**

Conflict of laws, see specific topics

Foreign judgment, effect of, see **DIVORCE, JUDGMENT**

Diplomatic officers, see **AMBASSADORS AND CONSULS**

Neutrality, breaches of and other hostile acts by private persons, see **NEUTRALITY LAWS**

Passports and travel documents, see **ALIENS, IMMIGRATION, AND CITIZENSHIP**

Suppression of—

Piracy, see **CRIMINAL LAW** 45.50

Slave trade, see **SLAVES**

Treaties and conventions between nations, see **TREATIES, EXTRADITION AND DETAINERS** and other specific topics

War and rights of belligerents and neutrals, see **WAR AND NATIONAL EMERGENCY**

1. Nature and authority in general.

2. Sources and scope.

3. Existence and identity of states.

4. Recognition of independence or belligerency.

5. Territorial extent and jurisdiction.

6. Acquisition and cession of territory.

7. Extraterritorial rights and jurisdiction.

8. Sovereignty and its exercise in general.

9. Change of sovereignty.

10. Relations between states in general.

10.1. Public policy and comity in general.

10.2. Recognition of sovereignty.

10.3. Nationality and allegiance.

10.4. Change of sovereignty.

10.5. — In general.

10.6. — Revolutionary and de facto governments.

10.7. — Former government or law continuing to function.

10.8. Domestic effect of foreign acts and laws.

10.9. — In general.

10.10. — Fiscal measures.

10.11. — Personal status, rights and liabilities.

10.12. — Property and confiscation thereof in general.

10.13. — Cargoes and vessels.

10.14. — Choses in action, accounts and securities.

10.15. — Realty.

10.16. — Soviet or socialistic nationalization.

10.17. — Assignment of nationalized property.

10.18. Domestic acts and laws involving foreign affairs.

10.19. — In general.

10.20. — Fiscal measures in general.

10.21. — Debt default act.

10.22. — Freezing orders and regulation of transfers.

10.23. — Personal status, rights and liabilities.

10.24. — Foreign agents and propagandists in general.

10.25. — Prosecutions, foreign agents.

10.26. Actions involving foreign sovereigns in general.

222. INTERPLEADER

- 10.27. Actions by sovereign or instrumentality.
- 10.28. Counterclaim or defense against sovereign.
- 10.29. Actions against sovereign or instrumentality.
- 10.30. — In general.
- 10.31. — Immunity.
- 10.32. — Waiver of immunity.
- 10.33. — Extent and effect of immunity.
- 10.34. — Corporations and other instrumentalities.
- 10.35. — Property of sovereign.
- 10.36. — Cargoes and vessels.
- 10.37. — Proceedings to determine immunity.
- 10.38. — Evidence of immunity, and fact questions.
- 10.39. — Conclusiveness of assertion of immunity.
- 10.40. — Executive or political recognition in general.
- 10.41. — Vessels, executive recognition.
- 10.42. — Procedure in actions in general.
- 10.43. — Parties, process and pleading.
- 10.44. — Evidence and fact questions.
- 10.45. International organizations and tribunals.
 - (1). In general.
 - (2). Privileges and immunities.
- 11. Intervention.
- 12. Claims against states by foreign subjects or citizens.
- 13. Arbitration.

222. INTERPLEADER**SUBJECTS INCLUDED**

Remedies for protection of persons holding property or liable for debts, etc., the right to which is in controversy between others, by compelling such claimants to litigate their rights between themselves

More particularly bills of interpleader, actions for interpleader, and rules or orders for

substitution of one such claimant as defendant in an action brought by the other

Nature and scope of the remedy in general

Grounds of such proceedings and defenses thereto

By and against whom and as to what property, debts, rights, claims, etc., they may be maintained

Procedure therein, judgments and orders therein and operation thereof

Costs in such proceedings

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Interpleader incidental to other remedies, such as sheriff's interpleader, see CREDITORS' REMEDIES and other specific topics

Intervention and substitution of parties in actions in general, see PARTIES

- I. RIGHT TO INTERPLEADER, ¶1-14.
- II. PROCEEDINGS AND RELIEF, ¶15-43.

I. RIGHT TO INTERPLEADER.

- 1. Nature and scope of remedy.
- 1.5. Statutory provisions and remedies.
- 2. Existence of other remedy.
- 3. Property and rights which may be subject of interpleader.
- 4. Actions in which interpleader by substitution of claimant is authorized.
- 5. Grounds of relief.
- 6. — In general.
- 7. — Identity of subject-matter of claims.
- 8. — Nature and grounds of claims.
 - (1). In general.
 - (2). Doubt or dispute as to rights of claimants.
- 9. — Privity of title between claimants.
- 10. — Interest or independent liability of person in possession or debtor.
- 11. — Particular conflicting claims.
- 12. Defenses and grounds of opposition.
- 13. Persons entitled in general.
- 14. Persons who may be compelled to interplead.

222. INTERPLEADER**II. PROCEEDINGS AND RELIEF.**

15. Form of remedy.
16. Remedy in equity or by equitable action in general.
17. Jurisdiction and venue.
18. Time to sue, limitations, and laches.
See also LIMITATION OF ACTIONS.
19. Parties.
20. Process and appearance.
21. Deposit or payment into court.
22. Injunction.
23. Bill, complaint, or petition.
24. Cross-bill or answer claiming interpleader.
25. Affidavit negating collusion.
26. Answer or plea and subsequent pleadings.
27. Demurrers and motions.
28. Issues and proof.
29. Evidence.
30. Dismissal before hearing.
31. Trial or hearing.
32. Relief awarded.
33. Judgment or decree, and enforcement thereof.
34. Appeal.
35. Costs and fees.
36. Statutory proceedings for substitution of claimant.
37. — In general.
38. — Time for application.
39. — Parties.
40. — Application, and proceedings thereon.
41. — Hearing and determination.
42. — Order.
43. — Proceedings after substitution.

223. INTOXICATING LIQUORS**SUBJECTS INCLUDED**

Regulation and prohibition of manufacture, sale, or use of intoxicating liquors
Rights of property and traffic in such liquors
Liabilities for injuries from the sale, use, etc., thereof

Prevention of unlawful dealings therein
Violations of liquor laws, and prosecution and punishment thereof as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Adulteration as public offense, see ADULTERATION

Commerce between states, etc., regulations regarding liquors as articles of, see COMMERCE

Indians, sale to, see INDIANS

Inspection for prevention of fraud or commercial purposes, see INSPECTION

Taxes not specific to intoxicating liquors, see INTERNAL REVENUE, TAXATION

I. POWER TO CONTROL TRAFFIC,
 §§1–12.

II. CONSTITUTIONALITY OF ACTS AND ORDINANCES, §§13–23.

III. LOCAL OPTION, §§24–43.

IV. LICENSES AND TAXES, §§44–109.

(A) IN GENERAL, §§44–104.

(B) REVOCATION OR FORFEITURE OF RIGHTS, §§106–109.

V. REGULATIONS, §§110–130.

VI. OFFENSES, §§131–176.

VII. ACTIONS FOR PENALTIES,
 §§177–195.

VIII. CRIMINAL PROSECUTIONS,
 §§196–243.

IX. SEARCHES, SEIZURES, AND FORFEITURES, §§244–257.

X. ABATEMENT AND INJUNCTION,
 §§258–281.

XI. CIVIL DAMAGE LAWS, §§282–324.

XII. RIGHTS OF PROPERTY AND CONTRACTS, §§325–331.

I. POWER TO CONTROL TRAFFIC.

1. Nature and grounds.
2. United States.
- 2.1. — In general.
3. — Places within exclusive jurisdiction.
4. — Licenses and their effect.
5. States.
- 5.1. — In general.
6. — Legislative regulation.
7. — Direct control by state agencies.
8. Territories.
9. Delegation of powers.

223. INTOXICATING LIQUORS**I. POWER TO CONTROL TRAFFIC.**(Cont'd)

- 9.1. — In general.
- 10. — To local authorities in general.
 - (1). In general.
 - (2). Regulations within municipal power in general.
 - (3). Power to prohibit or restrict as to locality.
 - (4). Power to license or tax.
 - (5). Power to prescribe punishment for violations.
- 11. — Concurrent and conflicting regulations by state and municipality.
- 12. — Submission to local option.

II. CONSTITUTIONALITY OF ACTS AND ORDINANCES.

- 13. Effect of prohibition by constitutional enactment.
- 14. Local option.
- 15. Licensing and regulation.
- 16. Taxation.
- 17. Prohibition.
- 18. Penalties.
- 19. Criminal prosecution and punishment.
- 20. Searches, seizures, and forfeitures.
- 21. Abatement and injunction.
- 22. Recovery of civil damages.
- 23. Rights of property.

III. LOCAL OPTION.

- 24. Nature and extent of option.
- 25. Statutory provisions.
- 26. Laws subject to adoption.
- 27. Consent of local authorities or voters.
- 28. Submission of question of adoption to popular vote.
- 29. — In general.
- 30. — District or territory in which election may be ordered.
- 31. — Successive elections and resubmission.
 - (1). In general.
 - (2). Part of territory covered by former election.
- 32. — Application.
 - (1). In general.
 - (2). Proceedings on application and record thereof.
- 33. — Order as to election.

III. LOCAL OPTION.(Cont'd)

- (1). In general.
- (2). Provisions as to notice.
- (3). Notice.
- 34. — Conduct of election.
 - (1). In general.
 - (2). Officers.
 - (3). Time for election.
 - (4). Registration and poll lists.
 - (5). Form of submission and ballots.
- 35. — Count of votes, returns, and canvass.
- 36. — Declaration and publication of result.
 - (1). In general.
 - (2). Designation of territory.
 - (3). Provisions of order as to notice.
 - (4). Publication and proof thereof.
 - (5). Operation and effect.
 - (6). Injunction.
- 37. — Contests.
- 38. — Resubmission after defective or invalid election.
- 39. Evidence of adoption.
- 40. Operation and effect of adoption or rejection.
 - (1). In general.
 - (2). Territory affected.
 - (3). Effect on other regulations.
- 41. Effect of change of boundary.
- 42. Submission of question of repeal to popular vote.
- 43. Operation and effect of repeal.

IV. LICENSES AND TAXES.**(A) IN GENERAL.**

- 44. Nature of license or taxation of liquor traffic in general.
- 45. Statutory provisions.
- 46. Municipal ordinances.
- 46.5. Number of licenses.
- 47. Subjects of license or tax.
- 48. — In general.
- 49. — Particular persons and occupations.
- 50. — Clubs and associations.
- 51. — Particular places.
- 52. — Different kinds of business.
- 53. — Different jurisdictions.
- 54. Necessity of obtaining license.

223. INTOXICATING LIQUORS

IV. LICENSES AND TAXES.(Cont'd)

- 55. — In general.
- 56. — Performance of requisites without license.
- 57. Eligibility for license.
- 57.1. — In general.
- 58. — Persons.
- 59. — Places.
 - (1). In general.
 - (2). Proximity to churches, schools, and other public institutions.
- 60. — Nature of traffic.
- 61. Powers, duties, and liabilities of officers.
 - (1). In general.
 - (2). Criminal responsibility.
- 62. Proceedings to procure license.
- 63. — In general.
- 64. — Form and requisites of application.
- 65. — Notice of application.
- 66. — Assent to or recommendation of application.
 - (5). In general.
 - (1). By freeholders and householders.
 - (2). By qualified electors.
 - (3). By taxpaying citizens and guardians of minors.
 - (4). By owners of contiguous property in general.
 - (5). Determination as to distance of contiguous property.
 - (6). Owners and their representatives who may assent.
 - (7). Capacity of infants.
 - (8). Validity of assent.
 - (9). Addition or withdrawal of names.
- 67. — Consent of owner to use of premises.
- 68. — Remonstrances.
 - (5). In general.
 - (1). Grounds.
 - (2). Remonstrants.
 - (3). Form and requisites.
 - (4). Execution and filing.
 - (5). Attorneys or agents of remonstrants.
 - (6). Effect on renewal of application.
 - (7). Withdrawal of names.
- 69. — Questions considered and discretion as to grant of license.

IV. LICENSES AND TAXES.(Cont'd)

- 70. — Hearing.
- 71. — Grant or refusal of license.
- 72. — Judicial revision of actions of licensing officer in general.
- 73. — Injunction against issuance.
- 74. — Mandamus to compel issuance of license.
- 75. — Appeal from decision.
 - (1). In general.
 - (2). Right of review.
 - (3). Presentation of questions before licensing officers.
 - (4). Proceedings for appeal.
 - (5). Rights pending appeal.
 - (6). Record.
 - (7). Review.
 - (8). Determination and disposition of case.
- 76. — Certiorari to review proceedings.
- 77. — Costs.
- 78. Form and requisites of license.
 - (1). In general.
 - (2). Amendment or correction.
- 79. Conditions imposed on licensee.
- 80. Validity of license in general.
- 81. Collateral attack on licenses.
- 82. Bonds and other security of dealers and others.
 - 82.1. — In general.
- 83. — Necessity and duty to give.
- 84. — Form, requisites, and sufficiency.
- 85. — Approval and filing.
- 86. — Breach of condition.
 - (1). In general.
 - (2). By clerk or employee of dealer.
 - (3). Sale or gift to minors or permitting them to enter and remain in place of business.
- 87. — Liabilities of sureties.
- 88. — Actions for breach.
 - (1). In general.
 - (2). Persons entitled to sue.
 - (3). Pleading.
 - (4). Evidence.
 - (5). Trial and judgment.
- 89. Fees and taxes.
- 89.1. — In general.
- 90. — Liability in general.

223. INTOXICATING LIQUORS**IV. LICENSES AND TAXES.(Cont'd)**

- (1). In general.
- (2). Liability of sureties.
- 91. — Amount.
- 92. — Levy and assessment.
- 93. — Lien on property.
- 94. — Payment and collection.
- 95. — Disposition of moneys collected.
- 96. — Refunding or recovering.
- 97. — Rebate on surrender of tax certificate.
 - (1). In general.
 - (2). Enforcement of right.
- 98. Nature of rights conferred.
- 99. — In general.
- 100. — As affected by legislation.
- 101. Construction and effect of licenses.
- 102. Renewal.
- 103. Transfer of license.
 - (1). In general.
 - (2). Grounds and objections in general; discretion.
 - (3). Agreements as to transfer; creditors' rights.
 - (4). Application and proceedings.
 - (5). Review and revocation.
- 104. Change of location of business.

(B) REVOCATION OR FORFEITURE OF RIGHTS.

- 106. In general.
 - (1). In general.
 - (2). Grounds in general.
 - (3). False statements in application for license.
 - (4). Violations of law.
 - (5). Conditions precedent.
- 107. Effect of subsequent legislation.
- 108. Proceedings.
 - 108.1. — In general.
 - 108.2. — Notice.
 - 108.3. — Parties.
 - 108.4. — Pleadings.
 - 108.5. — Evidence.
 - 108.6. — Adjournment or stay of proceedings.
 - 108.7. — Discontinuance.
 - 108.8. — Expiration of license before hearing.

IV. LICENSES AND TAXES.(Cont'd)

- 108.9. — Hearing, reference, findings, and judgment; penalties.
- 108.10. — Review and reinstatement.
 - (.5). In general.
 - (1). Administrative review.
 - (2). Judicial review in general.
 - (3). Nature and form of remedy; decisions reviewable.
 - (4). Proceedings for review; superse-deas.
 - (5). Record and hearing.
 - (6). Scope and extent of review in general.
 - (7). Additional proofs and trial de novo.
 - (8). Questions of fact and findings.
 - (9). Determination.
 - (10). Further review.
 - (11). Reinstatement.
- 108.11. — Costs.
- 109. Operation and effect.

V. REGULATIONS.

- 110. Nature and scope in general.
- 111. Statutory provisions.
- 112. Municipal regulations.
 - 112.1. Administrative regulations.
 - (1). In general.
 - (2). Validity and adoption.
 - 112.5. Transportation, importation, or exportation.
- 113. Registration of sales.
- 114. Display of licenses.
- 115. Screens and other obstructions of view.
- 116. Conduct of business.
- 117. Particular classes of persons.
 - 117.1. — In general.
- 118. — Employment.
- 119. — Sales, gifts, or admittance.
- 120. Sundays, holidays, and other days and times.
- 121. Hours of closing.
- 122. Nature or description of liquors.
 - 122.1. Price in general.
 - 122.2. Discounts and rebates.
 - 122.3. Publishing or advertising.
- 123. Purity and quality of liquors.

223. INTOXICATING LIQUORS**V. REGULATIONS.**(Cont'd)

- 124. Quantity, and sale at retail or wholesale; regulation of wholesalers in general.
- 125. Purpose of sale.
- 126. Druggists and physicians.
- 127. Public dispensaries or agencies.
- 128. — In general.
- 129. — Officers and agents.
- 129.5. Administrative officers and proceedings.
- 130. Partial or special prohibitions.
- 130.5. Judicial review and enforcement.

VI. OFFENSES.

- 131. Nature and elements in general.
- 132. Applicability of provisions of statutes and ordinances in general.
- 133. Liquors prohibited.
- 133.1. — In general.
- 134. — Description and properties.
- 135. — Ingredients in articles of food or drink.
- 136. — Ingredients in medicinal preparations.
- 137. Manufacture.
- 138. Transportation or importation.
- 139. Illegal possession.
- 140. Keeping for sale.
- 141. Carrying on business.
- 142. Maintaining screens and other obstructions of view.
- 143. Keeping place for unlawful sale or liquor nuisance.
- 143.5. Letting premises for unlawful use.
- 144. Employment or admittance of prohibited persons.
- 145. Keeping open at prohibited times.
- 146. Sale in general.
 - (1). In general.
 - (2). Solicitation of orders, and executory contracts.
 - (3). Purchase for others.
 - (4). Loan or exchange.
 - (5). Delivery of liquor to one furnishing raw material for manufacture.
 - (6). Distribution by clubs.
 - (7). Serving with meals.
- 147. Place of sale.

VI. OFFENSES.(Cont'd)

- (1). In general.
- (2). Shipments C. O. D.
- 148. Sales in local option districts.
- 149. Sales without license.
- 149.1. — In general.
- 150. — Dealers in general.
- 151. — Producers or manufacturers.
- 152. — Druggists or physicians.
- 153. Sales without giving bond.
- 154. Sales by licensees not authorized by license.
 - (1). In general.
 - (2). Place not authorized by license.
- 155. Prescriptions by physicians.
 - (1). In general.
 - (2). Necessity of prescription.
 - (3). Form and sufficiency.
- 156. Gifts.
- 157. Sales or gifts to prohibited persons.
- 158. — In general.
- 159. — To minors.
 - (1). In general.
 - (2). Intent, knowledge, or good faith of seller.
 - (3). Consent of parent or guardian.
- 160. — To students.
- 161. — To drunkards or intoxicated persons.
- 162. Sales or gifts at prohibited places.
- 163. Sales or gifts at prohibited times.
- 164. Sales in prohibited quantities.
- 165. Sales for prohibited purposes.
- 166. Persons liable.
- 167. — In general.
- 168. — Principal's liability for acts of agent or servant.
- 169. — Agents or servants.
- 170. — Husband and wife.
- 171. — Partners.
- 172. — Clubs or associations.
- 173. Different offenses in same transaction.
- 174. Continuing or separate offenses.
- 175. Persons entitled to prosecute.
- 176. Defenses.

VII. ACTIONS FOR PENALTIES.

- 177. Penalties imposed.
- 178. Nature and form of remedy.

223. INTOXICATING LIQUORS

VII. ACTIONS FOR PENALTIES.(Cont'd)

- 179. Grounds of action.
- 180. Defenses.
- 181. Persons entitled to sue.
- 182. Persons liable.
- 183. Jurisdiction and venue.
- 184. Time to sue and limitations.
See also LIMITATION OF ACTIONS.
- 185. Parties.
- 186. Process and appearance.
- 187. Pleading.
- 188. Evidence.
- 189. Amount recoverable.
- 190. Trial.
- 191. Judgment.
- 192. Execution.
- 193. Appeal and error.
- 194. Costs.
- 195. Disposition of penalties recovered.

VIII. CRIMINAL PROSECUTIONS.

- 196. Applicability of statutes and ordinances.
- 197. Jurisdiction.
- 198. Preliminary proceedings.
- 199. Indictment, information, or complaint.
- 199.1. — In general.
- 200. — Requisites and sufficiency in general.
- 201. — Character, condition, or occupation of accused.
- 202. — Intent.
- 203. — Knowledge or notice.
- 204. — Unlawful nature of act in general.
- 205. — Adoption and violation of local option and prohibition laws.
 - (1). In general.
 - (2). Form and sufficiency of allegations of adoption.
- 206. — Violation of license or local regulation.
- 207. — Place as element of offense.
- 208. — Time as element of offense.
- 209. — Manufacture.
- 210. — Transportation.
- 211. — Keeping for sale or other possession.
- 212. — Carrying on business.
- 213. — Keeping place for unlawful sale or maintaining liquor nuisance.

VIII. CRIMINAL PROSECUTIONS.(Cont'd)

- 214. — Acts and omissions in conduct of business in general.
- 215. — Sale or gift.
- 216. — Description and properties of liquor.
- 217. — Quantity of liquor.
- 218. — Price of liquor.
- 219. — Designation and description of purchaser or other party to transaction.
- 220. — Purpose of sale or gift.
- 221. — Negating license or authority.
- 222. — Negating defenses.
- 223. — Issues, proof, and variance.
 - (.5). In general.
 - (1). Issues and matters to be proved in general.
 - (2). Evidence admissible, and variance in general.
 - (3). Description and properties of liquor.
 - (4). Place of offense.
 - (5). Time of offense.
 - (6). Designation and description of purchaser or other party to offense.
- 224. Presumptions and burden of proof.
- 225. Admissibility of evidence.
- 226. — In general.
- 227. — Character, condition, or occupation of accused.
- 228. — Agency or representation of accused.
- 229. — Intent and knowledge.
- 230. — Acts or omissions constituting offense.
- 231. — Description and properties of liquor.
- 232. — Description, character, and condition of purchaser or other party to transaction.
- 233. — Incriminating or exculpatory circumstances.
 - (1). In general.
 - (2). Ownership or possession of liquors and appliances.
 - (3). Internal revenue license.
- 234. — License or authority.
- 235. — Matters of defense.

223. INTOXICATING LIQUORS**VIII. CRIMINAL PROSECUTIONS.(Cont'd)**

- 236. Weight and sufficiency of evidence.
 - (1). In general.
 - (2). Time.
 - (3). Place.
 - (4). Commission of act or participation therein by accused.
 - (5). Effect of possession of liquors and appliances.
 - (6). Effect of possession of internal revenue license.
 - (6.5). Keeping, storage, possession and delivery.
 - (7). Keeping for sale.
 - (8). Carrying on business.
 - (9). Keeping place for unlawful sale or maintaining liquor nuisance.
 - (10). Selling or keeping open at prohibited times.
 - (11). Sales or gifts in general.
 - (12). Unauthorized prescription.
 - (13). Description and properties of liquor.
 - (14). Quantity.
 - (15). Identity, character, and condition and age of purchaser or other party to transaction.
 - (16). License.
 - (17). Sales without license.
 - (18). Soliciting or taking orders.
 - (19). Manufacture.
 - (20). Transportation.
 - (21). Place of drinking.
 - (22). Letting premises for unlawful use.
- 237. Conduct of trial in general.
- 238. Questions for jury.
 - (1). In general.
 - (2). Commission of act or participation therein by accused.
 - (3). Description and properties of liquor.
 - (4). Purpose of keeping or sale.
 - (5). Sale.
 - (6). Place of sale.
- 239. Instructions.
 - (1). In general.
 - (2). Applicability to issues and evidence in general.

VIII. CRIMINAL PROSECUTIONS.(Cont'd)

- (3). Agency or representation of accused.
- (4). Intent, knowledge, or notice.
- (5). Description, quantity, and properties of liquor.
- (6). Purchaser or other party to transaction.
- (7). Keeping for sale.
- (7.5). Carrying on business.
- (8). Keeping place for sale or liquor nuisance.
- (9). Adoption of local option.
- (10). Sale.
- (11). Place of sale.
- (12). Purpose of sale.
- 240. Verdict and findings.
- 241. Appeal and error.
- 242. Sentence and punishment.
- 242.5. Requiring security from person convicted.
- 243. Lien of fine or costs on premises used.

IX. SEARCHES, SEIZURES, AND FORFEITURES.

- 244. Nature of remedy.
- 245. Statutory provisions.
- 246. Property subject to search, seizure, and forfeiture.
- 247. Grounds for seizure and forfeiture.
- 248. Information or complaint.
- 249. Search warrant, and execution and return thereof.
- 250. Proceedings to enforce forfeiture.
- 251. Claims to property and trial thereof.
- 252. Judgment and enforcement thereof.
- 253. New trial and review.
- 254. Costs.
- 255. Disposition of property or proceeds.
- 256. Recovery of property seized.
- 257. Wrongful seizure or forfeiture.

X. ABATEMENT AND INJUNCTION.

- 258. Nature of remedy.
- 259. Statutory provisions.
- 260. Nuisance or business subject to abatement or injunction.
- 261. Grounds for abatement or injunction.
- 262. Defenses.

226. JOINT TENANCY**X. ABATEMENT AND INJUNCTION.(Cont'd)**

- 263. Discontinuance of nuisance or bond therefor pending suit.
- 264. Persons entitled to maintain proceedings.
- 265. Persons against whom proceedings may be brought.
- 266. Summary proceedings.
- 267. Actions.
- 267.1. — In general.
- 269. — Jurisdiction and venue.
- 271. — Parties.
- 272. — Process and appearance.
- 273. — Preliminary or temporary injunction.
- 274. — Pleading.
- 275. — Evidence.
- 276. — Trial or hearing.
- 277. — Relief awarded.
- 278. — Judgment, and enforcement thereof in general.
- 279. — Violation of injunction, and punishment thereof.
- 280. — Appeal.
- 281. — Costs.

XI. CIVIL DAMAGE LAWS.

- 282. Nature of remedy.
- 283. Statutory provisions.
- 284. Grounds of action.
- 285. — In general.
- 286. — Illegality of sale.
- 287. — Sale contrary to notice.
- 288. — Injuries to person.
- 289. — Injuries to property.
- 290. — Injuries to means of support.
- 291. — Proximate cause of injury.
- 292. Defenses.
- 293. — In general.
- 294. — License or authority.
- 295. — Contributory act or negligence.
- 296. — Release or discharge.
- 297. Persons entitled to sue.
- 298. Persons liable.
- 299. — In general.
- 300. — Joint tort-feasors.
- 301. — Sureties on dealer's bond.
- 302. — Owners or lessors of premises.
- 303. Jurisdiction and venue.
- 304. Time to sue and limitations.

XI. CIVIL DAMAGE LAWS.(Cont'd)

See also LIMITATION OF ACTIONS.

- 305. Parties.
- 306. Pleading.
- 307. Evidence.
- 307.1. — In general.
- 308. — Presumptions and burden of proof.
- 309. — Admissibility.
- 310. — Weight and sufficiency.
- 311. Damages.
- 311.1. — In general.
- 312. — Measure in general.
- 313. — Exemplary.
- 314. Trial.
- 315. — In general.
- 316. — Questions for jury.
- 317. — Instructions.
- 318. — Verdict and findings.
- 319. Judgment.
- 320. — In general.
- 321. — Lien on premises used.
- 323. Appeal and error.
- 324. Costs.

XII. RIGHTS OF PROPERTY AND CONTRACTS.

- 325. Rights of property in general.
- 326. What law governs.
- 327. Validity of conveyances and contracts.
 - (1). In general.
 - (2). Place of sale.
 - (3). Note for price.
- 328. Recovery of possession or value.
- 329. Recovery of price of liquor sold.
 - (1). In general.
 - (2). Actions.
- 330. Recovery of payment for liquor.
- 331. Recovery of damages.

226. JOINT TENANCY**SUBJECTS INCLUDED**

Nature and incidents of the joint estate of two or more persons in property acquired and

226. JOINT TENANCY

held by them by grant or disseizin or in any manner otherwise than by descent, at the same time and in virtue of the same title, interest and possession, normally with right of survivorship in the others upon the death of one

Abolition of the distinction between joint tenancy and tenancy in common and its effect

Rights, powers and liabilities of joint tenants

Actions and other proceedings between, by, or against them

Severance and termination of the tenancy otherwise than by partition

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Conveyances creating joint tenancy, see DEEDS

Coparcenary tenancy, or tenancy in common, see TENANCY IN COMMON, MARRIAGE AND COHABITATION

Gifts accomplished by creation of joint accounts or joint tenancy, validity, see GIFTS

Husband and wife, joint tenancy, tenancy in common, or tenancy by entireties, see MARRIAGE AND COHABITATION

Joint accounts at banks and similar financial institutions, see FINANCE, BANKING, AND CREDIT IV(1)2

Joint ventures, rights of parties, see JOINT VENTURES

Partition of joint property, see PARTITION

1. Nature and incidents in general.
2. Statutory modification or abolition.
3. Creation and existence.
4. Severance.
5. Termination.
6. Survivorship.
7. Mutual rights, duties, and liabilities of joint tenants.
8. — In general.
9. — Disseisin and adverse possession.
10. — Actions between joint tenants.
11. Rights and liabilities of joint tenants as to third persons.
12. — In general.
13. — Sale and conveyance of joint property.
14. — Actions by or against joint tenants.

226H. JOINT VENTURES**SUBJECTS INCLUDED**

Association of two or more persons not otherwise joined in interest, by which they agree to engage in common enterprise for their mutual benefit

Their rights, duties, and liabilities arising therefrom as between themselves and as to third parties

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Coexecutors and similar joint fiduciaries, see EXECUTORS AND ADMINISTRATORS, GUARDIAN AND WARD, TRUSTS

Conspirators, see CONSPIRACY

Joint contracts and obligations more generally, see CONTRACTS and other specific topics

Joint estates, see JOINT TENANCY, TENANCY IN COMMON

Joint offenders, see CRIMINAL LAW

Joint wrongdoers, see CONTRIBUTION, TORTS, and other specific topics

Mining ventures, see MINES AND MINERALS III(B)

Partnerships, see PARTNERSHIP

Release of joint debtors, see RELEASE

- I. NATURE, CREATION, REQUISITES, AND EXISTENCE, ¶1-40.
- II. RIGHTS, DUTIES, AND LIABILITIES OF PARTIES, ¶41-60.
- III. TERMINATION, DISSOLUTION, OR MODIFICATION, ¶61-70.
- IV. ACTIONS AND PROCEEDINGS, ¶71-88.

I. NATURE, CREATION, REQUISITES, AND EXISTENCE.

1. In general; essential elements.
2. Joint venture as distinct entity.
3. Joint venture as partnership; applicability of partnership law in general.
See also PARTNERSHIP ¶439.
4. Other forms and relations distinguished.
5. — In general.
6. — Corporations.
See also CORPORATIONS AND BUSINESS ORGANIZATIONS ¶1005.

227. JUDGES**I. NATURE, CREATION, REQUISITES, AND EXISTENCE.**(Cont'd)

7. — Limited liability companies.
8. — Joint ownership; tenancies.
9. Contract or agreement in general.
10. Purpose or motive.
11. Intent.
12. Contributions of parties.
13. Community of interest.
14. — In general.
15. — In profits and losses.
16. Extent of parties' control.
17. Scope and duration of venture; single or multiple transactions.
18. Form, requisites, and validity of contract.
19. — In general.
20. — Oral or written agreements.
21. — Express or implied agreements.
22. — Consideration.
23. Particular cases and contexts.
24. — In general.
25. — Form, requisites, and validity of contract.
26. — Joint venture created.
27. — Joint venture not created.
28. Joint venture by estoppel.
29. Filing and registration requirements.
30. Name and location.

II. RIGHTS, DUTIES, AND LIABILITIES OF PARTIES.

41. In general.
42. Construction and operation of contracts in general.
43. Particular cases and contexts.
44. — In general.
45. — Property ownership and transactions.
46. — Profits and losses.
47. — Services and compensation.
48. — Advances and expenses; reimbursement.
49. Loyalty, good faith, and fiduciary duties.
50. — In general.
51. — Particular cases and contexts.
52. Rights, duties, and liabilities as to third parties.
53. — In general.
54. — Contracts, debts, and expenses.
55. — Torts.

III. TERMINATION, DISSOLUTION, OR MODIFICATION.

61. In general.
62. Particular cases and contexts.

IV. ACTIONS AND PROCEEDINGS.

71. In general.
72. Time to sue; limitations and laches.
73. Persons entitled to sue; parties; standing.
74. Process.
75. Pleading.
76. Evidence.
77. — In general.
78. — Presumptions, inferences, and burden of proof.
79. — Degree of proof.
80. — Weight and sufficiency.
81. Trial or hearing.
82. — In general.
83. — Questions of law or fact.
84. — Instructions.
85. Verdict, findings, and judgment.
86. Accounting.
87. Damages.
88. Costs and fees.

227. JUDGES**SUBJECTS INCLUDED**

Public officers authorized to preside in the courts and administer law therein, whether designated as judges, justices, chancellors, surrogates, or by other titles

Appointment, qualification, tenure, and removal of such judges

Special, substitute, and de facto judges

Their rights, powers, duties, and liabilities

Disqualification of judges

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Assignment of judges to particular courts or parts of courts, see **COURTS, FEDERAL COURTS**

227. JUDGES

Commissioners having subordinate judicial powers, see COURT COMMISSIONERS
 Courts martial, members of, see MILITARY JUSTICE, MILITIA

Justices of the peace, magistrates, etc., see JUSTICES OF THE PEACE, UNITED STATES MAGISTRATE JUDGES

Masters in chancery, see EQUITY

Referees and auditors having delegated and subordinate judicial powers, see BANKRUPTCY, FEDERAL CIVIL PROCEDURE, REFERENCE

I. APPOINTMENT, QUALIFICATION, AND TENURE, ¶1-12.

II. SPECIAL OR SUBSTITUTE JUDGES, ¶13-19.

III. RIGHTS, POWERS, DUTIES, AND LIABILITIES, ¶20-38.

IV. DISQUALIFICATION TO ACT, ¶39-56.

I. APPOINTMENT, QUALIFICATION, AND TENURE.

1. Nature of office.
2. Creation and abolition of office.
3. Appointment or election.
4. Eligibility.
5. Qualification.
6. De facto judges.
7. Term and tenure of office in general.
8. Vacancy in office.
9. Holding over after expiration of term.
10. Resignation and abandonment.
11. Removal or discipline.
 - (1). In general; constitutional and statutory provisions.
 - (2). Standards, canons, or codes of conduct, in general.
 - (3). Jurisdiction or authority to remove or discipline.
 - (4). Grounds and sanctions.
 - (5). Proceedings and review.
 - (5.1). — In general.
 - (6). — Discovery, disclosure, and confidentiality.
 - (7). — Evidence.
 - (8). — Reference and review.
- 11.5. Reinstatement.
12. Title to and possession of office.

II. SPECIAL OR SUBSTITUTE JUDGES.

13. Nature of office.
14. Constitutional and statutory provisions.
15. Necessity and grounds for appointment.
 - (1). In general.
 - (2). Successive appointments.
16. Appointment, qualification, and tenure.
 - (5). In general.
 - (1). Appointment.
 - (2). Qualification.
17. Evidence of authority.
18. Order or record as to appointment.
19. Objections to authority.

III. RIGHTS, POWERS, DUTIES, AND LIABILITIES.

20. Privileges.
21. Disabilities.
22. Compensation and fees.
 - (5). In general.
 - (1). Right to compensation in general.
 - (2). Constitutional and statutory provisions.
 - (3). From what fund payable.
 - (4). Resolutions and ordinances fixing compensation or making appropriations therefor.
 - (5). Amount.
 - (6). Right to extra compensation.
 - (7). Change in amount during term of office.
 - (8). Compensation of special judge.
 - (9). Deductions for absence or neglect of duty.
 - (10). Allowances for expenses.
 - (11). Compensation on retirement.
 - (12). Accounting for fees.
23. Nature and extent of authority.
24. Judicial powers and functions in general.
25. Authority and proceedings of special or substitute judges.
 - (1). In general.
 - (2). Duration of authority.
26. Validity of acts of de facto judges.
27. Powers and proceedings at chambers or out of court.
28. Powers and proceedings in vacation.
29. Exercise of powers in different courts.

228. JUDGMENT**III. RIGHTS, POWERS, DUTIES,
AND LIABILITIES. (Cont'd)**

30. Exercise of powers beyond territorial limits of jurisdiction.
31. Powers after expiration of term.
32. Powers of successor as to proceedings before former judge.
33. Ministerial functions and acts.
34. Custody of records, property, or funds.
35. Actions in official capacity.
36. Liabilities for official acts.
37. Liabilities on official bonds.
38. Criminal responsibility.

IV. DISQUALIFICATION TO ACT.

39. Nature and effect in general.
40. Constitutional and statutory provisions.
41. Pecuniary interest.
42. — In general.
43. — Stockholder of corporation.
44. — Citizen or taxpayer of municipality.
45. Relationship to party or person interested.
46. Relationship to attorney or counsel.
47. Acting as counsel or other participation in cause.
 - (1). In general.
 - (2). Presiding at former trial relating to same or similar matter.
48. Review by judge of his own decision.
49. Bias and prejudice.
 - (1). In general.
 - (2). Statements and expressions of opinion by judge.
50. Rights and duties of judge as to recusal.
51. Objections to judge, and proceedings thereon.
 - (1). In general.
 - (2). Time of making objection.
 - (3). Sufficiency of objection, affidavit, or motion.
 - (4). Determination of objections.
52. Waiver of disqualification or objections.
53. — In general.
54. — Consent of parties.
55. Removal of disqualification.
56. Effect on acts and proceedings of judge.

228. JUDGMENT**SUBJECTS INCLUDED**

Judicial determinations of rights of parties to proceedings in courts of justice in general, interlocutory as well as final

Rendition, entry, requisites, and validity of formal judgments, more particularly of judgments in civil actions, and amendment and correction thereof

Operation and effect of judgments in respect of persons and subject-matters concluded, and of property bound by judgments

Liens created by entry, docketing, etc., of judgments

Conclusiveness of judgments as against collateral attack

Direct attacks on judgments by motions in arrest or to open, vacate, etc., judgments, writs of error coram nobis, etc.

Actions to set aside or restrain enforcement of judgments or for other relief against them on equitable grounds

Assignment of judgments

Payment, satisfaction, and discharge of judgments

Revival of judgments by scire facias, motion, etc.

Operation and effect of judgments of courts of foreign states and countries

Enforcement of judgments in general, more particularly actions on judgments

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Admiralty decrees and orders, see ADMIRALTY

Bankrupt or insolvency acts, judgments in proceedings under, see BANKRUPTCY, CREDITORS' REMEDIES ¶1183

Criminal cases, sentences in, see SENTENCING AND PUNISHMENT

Declaratory judgments, see DECLARATORY JUDGMENT

Enforcement of judgments by particular classes of writs or proceedings, see CONTEMPT, CREDITORS' REMEDIES, and other specific topics

Equity decrees and orders, see EQUITY

Federal courts, judgments in, see FEDERAL CIVIL PROCEDURE

228. JUDGMENT

Justices of the peace, judgments of, see JUS-
TICES OF THE PEACE

Municipal courts and other specialized courts,
judgment in, see COURTS

Orders incident to proceedings in actions, see
MOTIONS and other specific topics

Particular forms or causes of action, or pro-
ceedings other than actions, judgments in,
see DIVORCE, EMINENT DOMAIN, IN-
JUNCTION, MANDAMUS and other spec-
ific topics

Particular persons, judgments for or against,
see EXECUTORS AND ADMINISTRA-
TORS, INFANTS, and other specific topics

Pleadings, judgments on, see PLEADING

Probate courts, judgment in, see COURTS,
WILLS

Relief against judgment, special remedies, see
REVIEW and other specific topics

— Execution, stay of, see CREDITORS'
REMEDIES

Higher courts, review in, see APPEAL AND
ERROR, CERTIORARI, PROHIBITION

— Supersedeas, see SUPERSEDEAS

I. NATURE AND ESSENTIALS IN GEN-
ERAL, ¶1-28.

II. BY CONFESSION, ¶29-70.

III. ON CONSENT, OFFER, OR ADMIS-
SION, ¶71-91.

IV. BY DEFAULT, ¶92-177.

(A) REQUISITES AND VALIDITY,
¶92-134.

(B) OPENING OR SETTING ASIDE
DEFAULT, ¶135-177.

V. ON MOTION OR SUMMARY PRO-
CEEDING, ¶178-190.

VI. ON TRIAL OF ISSUES, ¶191-269.

(A) RENDITION, FORM, AND REQUI-
SITES IN GENERAL, ¶191-232.

(B) PARTIES, ¶233-245.

(C) CONFORMITY TO PROCESS,
PLEADINGS, PROOFS, AND
VERDICT OR FINDINGS,
¶246-258.

(D) ARREST OF JUDGMENT,
¶259-269.

VII. ENTRY, RECORD, AND DOCKET-
ING, ¶270-293.

VIII. AMENDMENT, CORRECTION,
AND REVIEW IN SAME COURT,
¶294-335.

IX. OPENING OR VACATING,
¶336-402.

X. EQUITABLE RELIEF, ¶403-469.

(A) NATURE OF REMEDY AND
GROUNDS, ¶403-453.

(B) JURISDICTION AND PROCEED-
INGS, ¶454-469.

XI. COLLATERAL ATTACK, ¶470-523.

(A) JUDGMENTS IMPEACHABLE
COLLATERALLY, ¶470-485.

(B) GROUNDS, ¶486-517.

(C) PROCEEDINGS, ¶518-523.

XII. CONSTRUCTION AND OPERATION
IN GENERAL, ¶524-539.5.

XIII. MERGER AND BAR OF CAUSES
OF ACTION AND DEFENSES,
¶540-633.

(A) JUDGMENTS OPERATIVE AS
BAR, ¶540-581.

(B) CAUSES OF ACTION AND DE-
FENSES MERGED, BARRED,
OR CONCLUDED, ¶582-622.

(C) PERSONS WHO MAY TAKE AD-
VANTAGE OF THE BAR,
¶624-633.

XIV. CONCLUSIVENESS OF ADJUDICA-
TION, ¶634-751.

(A) JUDGMENTS CONCLUSIVE IN
GENERAL, ¶634-664.

(B) PERSONS CONCLUDED,
¶665-712.

(C) MATTERS CONCLUDED,
¶713-746.

(D) JUDGMENTS IN PARTICULAR
CLASSES OF ACTIONS AND
PROCEEDINGS, ¶747-751.

XV. LIEN, ¶752-802.

XVI. JUDGMENTS IN REM, ¶803-812.

XVII. FOREIGN JUDGMENTS,
¶813-832.7.

XVIII. ASSIGNMENT, ¶833-850.

XIX. SUSPENSION, ENFORCEMENT,
AND REVIVAL, ¶851-872.

XX. PAYMENT, SATISFACTION, MERG-
ER, AND DISCHARGE, ¶874-899.

XXI. ACTIONS ON JUDGMENTS,
¶900-947.

(A) DOMESTIC JUDGMENTS,
¶900-924.

(B) FOREIGN JUDGMENTS,
¶925-947.

XXII. PLEADING JUDGMENT AS ES-
TOPPEL OR DEFENSE,
¶948-950.

XXIII. EVIDENCE OF JUDGMENT AS
ESTOPPEL OR DEFENSE,
¶951-958.

228. JUDGMENT**I. NATURE AND ESSENTIALS IN GENERAL.**

1. Nature of judgment in general.
2. What law governs.
3. Judgment as a contract in general.
4. Judgment as a debt of record.
5. Essentials in general.
6. Authority of court or other tribunal.
7. — In general.
8. — Constitution and organization of court.
9. — Disqualification of judge.
10. — Place of rendition.
11. — Time of rendition.
12. Death of party before judgment.
13. Maturity of indebtedness.
14. Action or other formal proceeding.
15. Jurisdiction of cause of action.
16. Jurisdiction of the person and subject-matter.
17. Process or notice to sustain judgment.
 - (.5). In general.
 - (1). Necessity of process and of personal service in general.
 - (2). Sufficiency of process or of service.
 - (3). Nonresidents in general.
 - (4). Joint defendants.
 - (5). Nonresident joint defendants.
 - (6). Appearance by attorney.
 - (7). Unauthorized appearance by attorney.
 - (8). Subsequent and ancillary process or notice.
 - (9). Defective process or service.
 - (10). Return of process and proof of service.
 - (11). Attachment or garnishment proceedings.
18. Pleadings to sustain judgment.
 - (.5). In general.
 - (1). Necessity of pleadings.
 - (2). Sufficiency of pleadings.
 - (3). Defects in pleadings.
 - (4). Several counts in pleading.
19. Evidence to sustain judgment.
20. Definitiveness of determination in general.
21. Certainty of determination.

**I. NATURE AND ESSENTIALS
IN GENERAL.(Cont'd)**

22. Judgment distinguished from rule or order.
23. Judgment distinguished from decision or findings.
24. Formal requisites in general.
25. Validating invalid judgment.
26. Effect of invalidity.
27. — In general.
28. — Partial invalidity.

II. BY CONFESSION.

29. Nature of confession of judgment.
30. Statutory provisions.
31. Debts for which judgment may be confessed.
32. — In general.
33. — Debts not matured.
34. — Future advances.
35. — Contingent liabilities.
36. Persons who may confess judgment.
37. — In general.
38. — Joint debtors or defendants.
39. Consent of creditor.
40. Ratification by creditor.
41. Jurisdiction in general.
42. Confession without action in general.
43. Warrant or power of attorney.
- 43.1. — In general.
44. — Nature and necessity.
45. — Requisites and sufficiency.
46. — Construction and operation.
 - (1). In general.
 - (2). What law governs.
 - (3). Nature and extent of relief in general.
 - (4). Persons for or against whom judgment may be rendered.
47. Statement of indebtedness.
- 47.1. — In general.
48. — Nature and necessity.
49. — Requisites and sufficiency in general.
50. — Statement of facts out of which indebtedness arose.
51. Affidavit accompanying warrant or statement.
52. Judgment notes.

228. JUDGMENT**II. BY CONFESSION.(Cont'd)**

- 53. Confession after action brought in general.
- 54. Cognovit.
- 55. Withdrawal of plea.
- 56. Amount of recovery.
- 57. — In general.
- 58. — Liquidation by court or clerk.
- 59. Costs and attorney fees.
- 60. Form and requisites of judgment.
- 61. Time of entry of judgment.
- 62. — In general.
- 63. — In vacation.
- 64. Mode of entry of judgment.
- 65. Defects and objections.
- 66. Opening or vacating judgment.
- 67.1. — In general.
 - (1). In general; discretion.
 - (2). Opening or striking as proper remedy.
 - (3). Right to relief in general.
 - (4). Procedure and relief awarded.
- 67.2. — Jurisdiction and authority of court.
- 67.3. — Time for application.
- 68.1. — On motion of debtor in general.
 - (1). In general.
 - (2). Meritorious defense.
 - (3). Application and proceedings thereon.
 - (4). Hearing and determination.
 - (5). Relief awarded.
- 68.2. — Grounds in general.
 - (1). In general.
 - (2). Particular obligations or liabilities, judgments on.
 - (2.1). — In general.
 - (3). — Bonds and mortgages.
 - (4). — Leases and bailments.
 - (5). — Notes.
 - (6). Want of authority to confess judgment.
 - (7). Time of rendering or entering judgment.
 - (8). Excessive or insufficient judgment.
 - (9). Want or failure of consideration.
 - (10). Execution or alteration of instrument; forgery.

II. BY CONFESSION.(Cont'd)

- (11). Payment or satisfaction; set-offs, counterclaims or credits.
- 68.3. — Fraud, illegality, or mistake.
- 68.4. — Want or insufficiency of affidavit or statement.
- 68.5. — Affidavits and other evidence.
 - (.5). In general.
 - (1). Affidavits.
 - (2). Depositions.
 - (3). Presumptions and burden of proof.
 - (4). Admissibility of evidence.
 - (5). Weight and sufficiency of evidence.
 - (5.1). — In general.
 - (6). — Conflicting evidence; oath against oath.
 - (7). — Bond and mortgage cases.
 - (8). — Leases and bailments.
 - (9). — Note cases.
- 68.6. — Feigned issue.
- 68.7. — Conditions on granting application.
- 68.8. — Effect of application or order, and proceedings after vacation.
- 69. — On motion of creditors.
- 70. Construction and operation of judgment.

III. ON CONSENT, OFFER, OR ADMISSION.

- 71. Consent of parties.
 - 71.1. — In general.
- 72. — Requisites and sufficiency.
- 73. — Construction and operation.
- 74. Offer of judgment.
 - 74.1. — In general.
- 75. — Actions in which offer is authorized.
- 76. — Parties who may make.
- 77. — Time for making.
- 78. — Requisites and sufficiency.
- 79. — Mode of making or service.
- 80. — Withdrawal.
- 81. — Acceptance.
- 82. — Construction and operation.
- 83. Admission in pleading.
- 84. — In general.
- 85. — Part of demand.
- 86. Submission on agreed statement of facts.
- 87. Form and requisites of judgment.

228. JUDGMENT**III. ON CONSENT, OFFER, OR
ADMISSION.(Cont'd)**

- 88. Entry of judgment.
- 89. Defects and objections.
- 90. Opening or vacating judgment.
- 91. Construction and operation of judgment.

IV. BY DEFAULT.**(A) REQUISITES AND VALIDITY.**

- 92. Nature of judgment by default.
- 93. Statutory provisions.
- 94. Actions in which judgment by default is authorized.
- 95. Parties who may take judgment by default.
- 96. Parties against whom judgment by default may be rendered.
- 97. — In general.
- 98. — Codefendants.
- 99. Jurisdiction in general.
- 100. Pleadings to sustain judgment.
- 101. — In general.
 - (1). In general.
 - (2). In particular actions.
 - (3). Filing declaration, petition, or complaint, or cross-petition.
- 102. — Effect of amendment.
- 103. Default of appearance.
- 104. Withdrawal of appearance.
- 105. Default in pleading.
- 105.1. — In general.
- 106. — Failure to plead in general.
 - (1). In general.
 - (2). Time of answering or filing plea, answer, or affidavit of defense.
 - (3). Answering amended pleadings.
 - (4). Answer to part of cause of action.
 - (5). Necessity for filing plea or answer.
 - (6). Necessity for affidavit of defense or of merits.
 - (7). Failure to plead after decision on demurrer or exceptions.
 - (8). Failure to make reply or rejoinder.
 - (9). Striking out or withdrawal of pleading.
- 107. — Pleading remaining not disposed of.
- 108. — Pendency of motion.

IV. BY DEFAULT.(Cont'd)

- 109. Absence at trial or other proceeding.
 - 110. Operation and effect of default.
 - 111. — In general.
 - 112. — Matters admitted.
 - 113. — Right to notice of and participation in subsequent proceedings.
 - 114. Waiver of default.
 - 115. Relief awarded on judgment by default.
 - 116. — In general.
 - 117. — Conformity to pleadings.
 - 118. — Amount of recovery.
 - 119. Time for taking default.
 - 120. Taking or entry of default.
 - 121. Application for judgment.
 - 121.1. — In general.
 - 122. — Necessity.
 - 123. — Proceedings in general.
 - (1). In general.
 - (2). Time for taking proceedings.
 - 124. Proof of jurisdictional matters.
 - 125. Proof of default.
 - 126. Proof of cause of action.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
 - 127. Interlocutory judgment.
 - 128. Final judgment.
 - 129. Form and requisites in general.
 - 130. Recitals.
 - 131. Entry of judgment in general.
 - 132. Premature entry of judgment.
 - 133. Defects and objections.
 - 134. Construction and operation.
- (B) OPENING OR SETTING ASIDE DEFAULT.**
- 135. Nature and scope of remedy.
 - 136. Statutory provisions.
 - 137. Authority of court.
 - 138. Right to relief in general.
 - (1). In general.
 - (2). Negligence in suffering default.
 - (3). Want or insufficiency of notice of proceedings.
 - 139. Discretion of court.
 - 140. Judgments which may be opened or set aside.

228. JUDGMENT**IV. BY DEFAULT.(Cont'd)**

- 141. Invalidity of judgment.
- 142. Right to defend after judgment on service by publication or other constructive service.
- 143. Excuses for default.
 - (1). In general.
 - (2). Necessity for excuse.
 - (3). Mistake, surprise, or excusable neglect in general.
 - (4). Mistake as to cause of action or defense.
 - (5). Mistake as to time or place of appearance or trial.
 - (6). Mistake as to process.
 - (7). Mistake as to employment of counsel.
 - (8). Advice of sheriff or attorney.
 - (9). Conduct of codefendant.
 - (10). Mistake or negligence of counsel, in general.
 - (11). Mistake or negligence of counsel as to time or place of appearance or trial.
 - (12). Negligent failure of counsel to plead.
 - (13). Failure of party to reach courthouse in time.
 - (14). Absence of party or counsel caused by private or official business.
 - (15). Death or disability.
 - (16). Ignorance.
 - (17). Agreement with or statement of party taking default or his counsel.
 - (18). Statement or order of judge or clerk.
- 144. Irregularities or defects in proceedings on default.
- 145. Meritorious cause of action or defense.
 - (1). In general.
 - (2). Necessity for showing meritorious cause of action or defense.
 - (3). Necessity for stating facts constituting defense.
 - (4). Sufficiency of defense.
- 146. Prejudice from judgment.
- 147. Waiver of right to relief.
- 148. Persons entitled to relief.

IV. BY DEFAULT.(Cont'd)

- 149. Persons as against whom judgment may be opened or set aside.
- 150. Proceedings in cause operating to open default.
- 151. Form and requisites of application in general.
- 153. Time for application.
 - (1). In general.
 - (2). Limitations applicable in general.
 - (3). Notice of entry of judgment.
 - (4). At the same or a subsequent term.
 - (5). After execution or other proceedings for enforcement.
 - (6). Where service is constructive.
- 154. Parties on application.
- 155. Notice of application.
- 156. Stay of proceedings on judgment.
- 157. Affidavits on application.
- 157.1. — In general.
- 158. — Necessity.
- 159. — Requisites and sufficiency in general.
- 160. — Affidavit of merits.
- 161. Proposed answer or other pleading.
- 162. Evidence.
 - (5). In general.
 - (1). Counter affidavits.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility of evidence.
 - (4). Weight and sufficiency of evidence.
- 163. Hearing and determination.
- 164. Relief awarded in general.
- 165. Opening or setting aside judgment in part.
- 166. Conditions on granting application.
- 167. — In general.
- 168. — Limiting defense.
- 169. — Payment of costs and expenses.
- 170. — Judgment to stand as security.
- 171. — Subsequent proceedings in cause.
- 172. — Performance of conditions.
- 173. Order.
- 174. Operation and effect in general.
- 175. Defenses after opening default.
- 176. Proceedings after opening default.
- 177. Objections and exceptions.

228. JUDGMENT**V. ON MOTION OR SUMMARY PROCEEDING.**

- 178. Nature of summary judgment.
- 179. Statutory provisions.
- 180. Actions in which summary judgment is authorized.
- 181. Grounds for summary judgment.
 - (1). In general.
 - (2). Absence of issue of fact.
 - (3). Presence of question of law.
 - (4). Necessity that right to judgment be free from doubt.
 - (5). Matters affecting right to judgment.
 - (5.1). — In general.
 - (6). — Existence of defense.
 - (7). — Bar of statute of limitations.
 - (8). — Ambiguity in written instrument.
 - (9). — Availability of documentary evidence.
 - (10). — Effect of counterclaim.
 - (11). — Sufficiency of pleading.
 - (12). — Effect of amending pleading.
 - (13). — Effect of prior decision.
 - (14). Partial summary judgment.
 - (15). Particular cases.
 - (15.1). — In general.
 - (16). — Attorneys, cases involving.
 - (17). — Banks, cases involving.
 - (18). — Brokers or agents, cases involving.
 - (19). — Contract cases in general.
 - (20). — Domestic relations.
 - (21). — Employees, cases involving.
 - (22). — Guaranty cases.
 - (23). — Insurance cases.
 - (24). — Landlord and tenant cases.
 - (25). — Mortgages and secured transactions, cases involving.
 - (26). — Negotiable instrument cases.
 - (27). — Public officers and employees, cases involving.
 - (28). — Replevin cases.
 - (29). — Sales cases in general.
 - (30). — Specific performance cases.
 - (31). — Stock and stockholders, cases involving.
 - (32). — Tax cases.

V. ON MOTION OR SUMMARY PROCEEDING.(Cont'd)

- (33). — Tort cases in general.
- (34). — Trust cases.
- 182. Motion or other application.
- 183. — In general.
- 184. — Notice.
- 185. — Evidence in general.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Documentary evidence or official record.
 - (5). Weight and sufficiency.
 - (6). Existence or non-existence of fact issue.
- 185.1. — Affidavits, form, requisites and execution of.
 - (1). In general.
 - (2). Persons who may make affidavit.
 - (3). Personal knowledge or belief of affiant.
 - (4). Matters of fact or conclusions.
 - (5). Statement of absence of defense or meritorious actions.
 - (6). Execution of affidavit.
 - (7). Amended or additional affidavits.
 - (8). Defects and objections.
- 185.2. — Use of affidavits.
 - (1). In general.
 - (2). Purpose and function.
 - (3). Showing to be made on supporting affidavit.
 - (4). Showing to be made on opposing affidavit.
 - (5). Sufficiency of affidavit.
 - (6). Construction of affidavits in general.
 - (7). Admission of facts alleged in affidavit.
 - (8). Operation and effect of affidavit.
 - (9). Effect of failure to file affidavit.
- 185.3. — Evidence and affidavits in particular cases.
 - (1). In general.
 - (2). Particular defenses.
 - (3). Accounting and accounts.
 - (4). Attorneys.

228. JUDGMENT

V. ON MOTION OR SUMMARY PROCEEDING.(Cont'd)

- (5). Banks, corporations and associations.
- (6). Bonds.
- (7). Brokers and agents.
- (8). Contracts.
- (9). Domestic relations.
- (10). Guaranty.
- (11). Injunction.
- (12). Insurance.
- (13). Labor and employment.
- (14). Landlord and tenant.
- (15). Liens and mortgages.
- (16). Negotiable instruments.
- (17). Remedies to determine property rights.
- (18). Sales of real and personal property.
- (19). Specific performance.
- (20). Taxes and assessments.
- (21). Torts.
- 186. — Hearing and determination.
- 187. Form and requisites of judgment.
- 188. Entry of judgment.
- 189. Defects and objections.
- 190. Construction and operation.

VI. ON TRIAL OF ISSUES.

(A) RENDITION, FORM, AND REQUISITES IN GENERAL.

- 191. Necessity and nature in general.
- 192. Statutory provisions.
- 193. Power and duty of court in general.
- 194. Determination of all issues.
- 195. Issues on demurrer.
- 196. Issues on plea in abatement.
- 197. Dismissal of action, nonsuit, or direction of verdict.
- 198. Verdict and findings of jury.
- 199. Notwithstanding verdict.
 - (1). In general.
 - (2). Effect of pleadings.
 - (3). Effect of evidence in general.
 - (3.1). Matters admitted by motion.
 - (3.2). Evidence and inferences that may be considered or drawn.
 - (3.3). Credibility of witnesses and weight of evidence.

VI. ON TRIAL OF ISSUES.(Cont'd)

- (3.4). Evidence improperly admitted.
- (3.5). Propriety of judgment in general.
- (3.6). Where evidence is conflicting or where different inferences may be reasonably drawn therefrom.
- (3.7). Where there is some substantial evidence to support verdict.
- (3.8). Where failure of proof may be remedied on new trial.
- (3.9). Where directed verdict or binding instructions would have been proper.
- (3.10). Where there is no evidence to sustain verdict.
- (3.11). Where undisputed facts entitle movant to judgment as matter of law.
- (3.12). Incontrovertible physical facts, effect of.
- (3.13). Insurance policies, actions on.
- (3.14). Miscellaneous actions and proceedings.
- (3.15). Tort actions in general.
- (3.16). Carrier and street railroad cases.
- (3.17). Motor vehicle collision cases.
- (3.18). Railroad crossing cases.
- (3.19). Will contests.
- (4). Verdict subject to question reserved by court.
- (5). Motion for judgment in general.
- (6). Time for motion.
- (7). Party entitled to move.
- (8). Basing motion on records of case.
- 200. Decision on trial by court.
- 201. Report of referee.
- 202. Judgments in causes tried together.
- 203. More than one judgment in same case.
- 204. Nature and extent of relief in general.
- 205. Amount of recovery.
- 206. Personal judgment in proceedings by attachment or in rem.
- 207. Affirmative relief to defendant.
- 208. Relief as between coparties.
- 209. Time for rendition.
- 210. — In general.

228. JUDGMENT

VI. ON TRIAL OF ISSUES.(Cont'd)

- 211. — Pendency of motion for new trial or in arrest.
- 212. — In vacation.
- 213. Application for judgment.
- 214. Allowance of and order for judgment.
- 215. Mode of rendition.
- 216. Interlocutory judgment.
- 217. Final judgment.
- 218. Formal requisites.
- 219. Contents in general.
- 220. Recitals.
- 221. Designation of amount.
- 222. — In general.
- 223. — Interest.
- 224. — Costs and fees.
- 225. — Medium of payment.
- 226. Designation and description of property.
- 227. Exceptions and saving clauses.
- 228. Alternative provisions.
- 229. Conditions.
- 230. Provisions as to payment and enforcement.
- 231. Surplusage.
- 232. Defects and objections.

(B) PARTIES.

- 233. Determination as to all parties.
- 234. Statutory provisions as to judgment for or against coparties.
- 235. Judgment for one or more coparties.
- 236. Judgment against one or more coparties.
- 237. — In general.
 - (1). In general.
 - (2). Judgment against defendant where codefendant is not served with process.
 - (3). Judgment against defendant where codefendant is in default or is released.
 - (4). Dismissal or nonsuit as to one or more parties.
- 238. — Actions on contract.
- 239. — Actions for tort.
- 240. Joint or several judgment.
- 241. Separate judgments against different parties.
- 242. Judgment for or against party deceased.

VI. ON TRIAL OF ISSUES.(Cont'd)

- 243. Judgment for or against person not a party.
- 244. Designation of parties.
- 245. Defects and objections.

(C) CONFORMITY TO PROCESS, PLEADINGS, PROOFS, AND VERDICT OR FINDINGS.

- 246. Conformity to process.
- 247. Conformity to pleadings and proofs.
- 248. — In general.
- 249. — Nature and form of remedy.
- 250. — Grounds of action or defense.
- 251. — Issues raised by pleadings.
 - (1). In general.
 - (2). Judgment for defendant or intervenor.
 - (3). Withdrawal, or abandonment of, or failure to establish issue.
- 252. — Prayer for relief in general.
 - (1). In general.
 - (2). Effect of answer or reply or absence thereof.
 - (3). Relief as to particular parties.
 - (4). Alternative relief in general.
 - (5). General prayer.
- 253. — Amount demanded.
 - (1). In general.
 - (2). Interest, costs, and expenses of suit.
 - (3). Installments accruing after commencement of action.
 - (4). Set-off or counterclaim.
- 254. — Medium of payment.
- 255. — Facts and evidence.
- 256. Conformity to verdict and findings.
 - (1). In general.
 - (2). Special verdict and findings.
 - (3). Rejection of part of verdict as surplusage.
 - (4). Joint or several judgment.
 - (5). Parties for or against whom judgment may be rendered.
 - (6). Amount.
 - (7). Interest, costs, and attorney fees.
- 257. Conformity to report of referee.
- 258. Objections on ground of variance.

(D) ARREST OF JUDGMENT.

- 259. Grounds in general.

228. JUDGMENT

VI. ON TRIAL OF ISSUES.(Cont'd)

- 260. Misjoinder of causes of action.
- 261. Objections to jurisdiction.
- 262. Defects and objections as to parties.
- 263. Defects in pleadings.
 - (1). In general.
 - (2). Formal defects.
 - (3). Defects available on demurrer.
 - (4). Defects available after demurrer overruled.
 - (5). One or more defective counts, allegations, or causes of action.
 - (6). Amendable defects.
 - (7). Waiver of defects in general.
 - (8). Defects cured by verdict or findings.
 - (9). Variance between pleading and writ.
 - (10). Variance between pleading and proof.
- 264. Objections to jury.
- 265. Defects in and objections to verdict or findings.
- 266. Matter not apparent of record in general.
- 267. Motions in arrest.
- 268. Order for arrest.
- 269. Operation and effect of arrest.

VII. ENTRY, RECORD, AND DOCKETING.

- 270. Necessity for entry.
- 271. Authority to enter.
- 272. Time for entry in general.
- 273. Entry nunc pro tunc.
 - (1). In general.
 - (2). Failure to enter judgment at time of rendition.
 - (3). Errors or irregularities in previous entry.
 - (4). Existence of previous judgment or order.
 - (5). Death of party before final judgment or before entry thereof.
 - (6). Time of entry nunc pro tunc.
 - (7). Effect of entry nunc pro tunc.
 - (8). Proceedings for entry nunc pro tunc.
- 274. Parties who may enter.
- 275. Stay of proceedings.
- 276. Proceedings for entry.

VII. ENTRY, RECORD, AND DOCKETING.(Cont'd)

- 277. Judgment roll or record.
- 277.1. — In general.
- 278. — Form and requisites in general.
- 279. — Matters included.
- 280. — Making and filing.
- 281. — Date.
- 282. — Signature.
- 283. — Re-entry or restoration of lost or destroyed judgment.
- 284. Judgment book or docket.
- 285. Index to record.
- 286. Defects and objections.
- 287. Effect of entry and record as between parties in general.
- 288. Record as notice.
- 289. Conflict in record.
- 290. Filing transcript in other court.
- 291. Filing transcript of justice's judgment in court of record.
- 292. Filing transcript in other county or district.
- 293. Effect of failure to enter judgment or file transcript.

VIII. AMENDMENT, CORRECTION, AND REVIEW IN SAME COURT.

- 294. Nature and scope of remedy.
- 295. Statutory provisions.
- 296. Authority of court, judge, or judicial officer.
- 297. — In general.
- 298. — During same term.
- 299. — After the term.
 - (1). In general.
 - (2). At chambers or in vacation.
 - (3). Effect of motion for rehearing during term.
 - (4). Submission of parties to jurisdiction of court.
- 300. Discretion of court.
- 301. Judgments which may be amended or corrected.
- 302. Nature of errors or defects.
- 303. — In general.
- 304. — Judicial errors.
- 305. — Provisions of judgment not conforming to decision or verdict.
- 306. — Clerical errors.

228. JUDGMENT

VIII. AMENDMENT, CORRECTION, AND REVIEW IN SAME COURT.(Cont'd)

- 307. — Omissions.
- 308. Formal requisites.
- 309. Recitals in general.
- 310. Parties.
- 311. Process, service, and appearance.
- 312. Pleadings and other proceedings.
- 313. Relief awarded in general.
- 314. Amount of recovery.
- 315. Source of amendment or correction.
- 316. Amendment or correction on court's own motion.
- 317. Persons entitled to apply.
- 318. Persons as against whom judgment may be amended.
- 319. Form and requisites of application in general.
- 320. Jurisdiction of application.
- 321. Time for application.
- 322. Parties on application.
- 323. Notice of application.
- 324. Affidavits and other evidence.
- 325. Hearing and determination.
- 326. Allowing amendment nunc pro tunc.
- 327. Conditions on allowing amendment.
- 328. Order.
- 329. Mode of making amendment or correction.
- 330. Operation and effect.
- 331. — In general.
- 332. — As to third persons.
- 333. Objections and exceptions.
- 334. Writ of error coram nobis.
- 335. Actions and other proceedings to review judgment.
 - (1). In general.
 - (2). Grounds for review.
 - (3). Pleading and evidence.
 - (4). Hearing, determination, and relief.

IX. OPENING OR VACATING.

- 336. Nature and scope of remedy.
- 337. Statutory provisions.
- 338. Existence of or resort to other remedy.
- 339. Authority of court.
- 340. — In general.
- 341. — During same term.

IX. OPENING OR VACATING.(Cont'd)

- 342. — After the term.
 - (1). In general.
 - (2). At subsequent term.
 - (3). Necessity and effect of motion during the term.
 - (4). In vacation, at chambers, or adjourned term.
 - (5). Stipulation or agreement of parties.
- 343. Right to relief in general.
- 344. Discretion of court.
- 345. Judgments which may be opened or vacated.
- 346. Invalidity of judgment in general.
- 347. Insufficiency or illegality of cause of action.
- 348. Want of jurisdiction.
- 349. — In general.
- 350. — Want of or defects in process, service, or notice.
- 351. — Falsity of return or proof of service.
- 352. — Unauthorized appearance.
- 353. Errors and irregularities.
- 354. — In general.
- 355. — Errors of law.
- 356. — Errors of fact.
- 357. — Defects and objections as to parties.
- 358. — Defects and objections as to pleadings.
- 359. — Irregularities in proceedings before judgment.
- 360. — Irregularities in entry of judgment.
- 361. — Judgment unauthorized or contrary to agreement.
- 362. Mistake, inadvertence, surprise, excusable neglect, casualty, or misfortune.
 - 363. — In general.
 - 364. — Mistake of party or counsel.
 - 365. — Absence of party.
 - 366. — Absence of counsel.
 - 367. — Negligence of party.
 - 368. — Negligence of counsel.
 - 369. — Absence of witness or evidence.
 - 370. — Surprise.
 - 371. — Disability of party.
 - 372. Misconduct of party or counsel.
 - 373. — In general.

228. JUDGMENT

IX. OPENING OR VACATING.(Cont'd)

- 374. — Collusion.
- 375. — Fraud in preventing defense or procuring judgment.
- 376. — Perjury or false testimony.
- 377. Matters available and questions presented before judgment.
- 378. Newly discovered evidence.
- 379. Meritorious cause of action or defense.
 - (5). In general.
 - (1). Necessity.
 - (2). Nature and sufficiency.
- 380. Waiver of right to relief.
- 381. Vacating judgment on court's own motion.
- 382. Persons entitled to relief.
- 383. Persons as against whom judgment may be vacated.
- 384. Form and requisites of application in general.
- 385. Jurisdiction of application.
- 386. Time for application.
 - (1). In general.
 - (2). Laches in general.
 - (3). Invalid or unauthorized judgments.
 - (4). Objections to jurisdiction or process.
 - (5). Objections based on irregularities.
 - (6). Judgments through mistake, surprise, neglect, or other misfortune.
 - (7). Fraudulent judgments.
 - (8). Commencement of proceedings.
- 387. Parties on application.
- 388. Notice of application.
- 389. Affidavits on application.
- 390. — In general.
- 391. — Affidavit of merits.
- 392. Evidence.
 - (5). In general.
 - (1). Counter affidavits.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility of evidence.
 - (4). Weight and sufficiency of evidence.
 - (4.1). — In general.
 - (5). — Want of jurisdiction.

IX. OPENING OR VACATING.(Cont'd)

- (6). — Mistake, inadvertence, surprise, excusable neglect, casualty, or misfortune.
- (7). — Fraud, perjury, collusion, or other misconduct.
- (8). — Meritorious cause of action or defense.
- 393. Hearing and determination.
- 394. Relief awarded in general.
- 395. Opening or vacating judgment in part.
- 396. Conditions on opening or vacating judgment.
- 397. Order.
- 398. Operation and effect.
- 399. — In general.
- 400. — As to third persons.
- 401. Restitution.
- 402. Liabilities on bonds given in proceedings to vacate.

X. EQUITABLE RELIEF.

(A) NATURE OF REMEDY AND GROUNDS.

- 403. Nature and scope of remedy in general.
- 404. Statutory provisions.
- 405. Right to relief in general.
- 406. Discretion of court.
- 407. Existence of or resort to other remedy.
 - (1). In general.
 - (2). Review in same court.
 - (3). New trial.
 - (4). Appeal, error, or certiorari.
 - (5). Loss of legal remedy.
 - (6). Excuse for failure to assert legal remedy.
- 408. Inadequacy of remedy at law.
- 409. Judgments against which relief may be had.
- 410. — In general.
- 411. — Judgments by confession or on consent or offer.
- 412. — Judgments by default.
- 413. — Satisfaction or discharge of judgment.
- 414. Equitable nature of grounds for relief.
- 415. Invalidity of judgment in general.
- 416. Insufficiency or illegality of cause of action.
- 417. Want of jurisdiction.

228. JUDGMENT

X. EQUITABLE RELIEF.(Cont'd)

- 418. — In general.
- 419. — Want of or defects in process, service, or notice.
- 420. — Falsity of return or proof of service.
- 421. — Unauthorized appearance.
- 422. Errors and irregularities.
- 423. — In general.
- 424. — Defects and objections as to parties.
- 425. — Defects and objections as to pleadings.
- 426. — Irregularities in proceedings.
- 427. — Judgment unauthorized or contrary to agreement.
- 428. Defenses not interposed in former action.
- 429. — In general.
- 430. — Equitable defenses.
- 431. Excuses for failure to interpose defenses.
- 432. — In general.
- 433. — Ignorance of facts.
- 434. — Necessity of discovery.
- 435. — Mistake, surprise, or accident.
- 436. — Negligence of party.
- 437. — Negligence of counsel.
- 438. — Death or disability of party.
- 439. Compelling set-off or reduction of damages.
- 440. Misconduct of party or counsel.
- 441. — In general.
- 442. — Collusion.
- 443. — Fraud.
 - (.5). In general.
 - (1). Procuring judgment in general.
 - (2). Fraud of counsel.
 - (3). Preventing defense.
- 444. — Perjury or false testimony.
- 445. Questions presented in original action.
- 446. Newly discovered evidence.
- 447. Meritorious cause of action or defense.
 - (.5). In general.
 - (1). Necessity in general.
 - (2). Nature of defense in general.
 - (3). Limitations.
- 448. Waiver of right to relief.
- 449. Conditions precedent.
- 450. Leave to sue.

X. EQUITABLE RELIEF.(Cont'd)

- 451. Defenses.
- 452. Persons entitled to relief.
- 453. Persons as against whom relief may be granted.
- (B) JURISDICTION AND PROCEEDINGS.
- 454. Form of remedy.
- 455. Jurisdiction and venue.
- 456. Limitations and laches.
 - (1). In general.
 - (2). Limitations applicable.
 - (3). Computation of period.
- 457. Parties.
- 458. Process and appearance.
- 459. Preliminary or temporary injunction.
- 460. Pleading.
 - (.5). In general.
 - (1). Bill, complaint, or petition in general.
 - (2). Certainty of allegation in general.
 - (3). Averments as to diligence and excuse for failure in former action.
 - (4). Averments as to fraud or perjury.
 - (5). Averments as to new matter.
 - (6). Averments of defense or injustice of judgment.
 - (7). Exhibits and copies of instruments and records.
 - (8). Verification.
 - (9). Answer or cross-complaint.
 - (10). Issues, proof, and variance.
 - (11). Motion or demurrer.
- 461. Evidence.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility.
 - (3). Weight and sufficiency in general.
 - (4). Sufficiency as to want of jurisdiction.
 - (5). Sufficiency as to fraud, perjury, collusion, or other misconduct.
- 462. Dismissal before hearing.
- 463. Trial or hearing.
- 464. Relief awarded.
- 465. Conditions on granting relief.

228. JUDGMENT

X. EQUITABLE RELIEF.(Cont'd)

- 466. Judgment or decree, and enforcement thereof.
- 467. Appeal.
- 468. Costs.
- 469. Operation and effect of injunction.

XI. COLLATERAL ATTACK.

(A) JUDGMENTS IMPEACHABLE COLLATERALLY.

- 470. Judgments presumed valid in general.
- 471. Courts or other tribunals rendering judgment.
- 472. — In general.
- 473. — Exclusive jurisdiction.
- 474. — Special, limited, or inferior jurisdiction.
- 475. — Probate jurisdiction.
- 476. — Criminal jurisdiction.
- 477. — Special tribunals, boards, and officers exercising judicial functions.
- 478. Nature of subject-matter.
- 479. Nature of action or other proceeding.
- 480. Nature, rendition, and form of judgment in general.
- 481. Judgment by confession or on consent or offer.
- 482. Judgment by default.
- 483. Judgment on motion or summary proceeding.
- 484. Judgment on trial of issues.
- 485. Judgment void on its face in general.

(B) GROUNDS.

- 486. Invalidity of judgment in general.
 - (1). In general.
 - (2). Entry of judgment after death or dissolution of party.
- 487. Insufficiency or illegality of cause of action.
- 488. Want of jurisdiction.
- 489. — In general.
- 490. — Want of or defects in process, service, or notice.
 - (.5). In general.
 - (1). Want of process, service, or notice.
 - (2). Defects in process, service, or notice.
 - (3). Service by publication.

XI. COLLATERAL ATTACK.(Cont'd)

- 491. — Defects in return or proof of service.
- 492. — Unauthorized appearance.
- 493. — Right of parties or privies to impeach judgment.
- 494. — Right of third persons to impeach judgment.
- 495. — Presumptions as to superior or general jurisdiction.
 - (1). In general.
 - (2). Presumptions as to process or notice and service.
- 496. — Presumptions as to special, limited, or inferior jurisdiction.
- 497. — Effect of judgment record or recitals therein.
 - (1). In general.
 - (2). Recitals as to notice or appearance.
 - (3). Recitals as to service by publication.
- 498. — Effect of decision by court as to its own jurisdiction.
- 499. — Extrinsic evidence as to jurisdictional facts.
- 500. Errors and irregularities.
- 501. — In general.
- 502. — Defects and objections as to parties.
- 503. — Defects and objections as to pleadings.
- 504. — Irregularities in proceedings.
 - (1). In general.
 - (2). Error in proceedings at trial.
 - (3). Defects in entry, form, and contents of judgment.
 - (4). Defects in entry of judgment by confession or consent.
- 505. — Judgment, unauthorized or contrary to agreement.
- 506. — Right of parties or privies to impeach judgment.
- 507. — Right of third persons to impeach judgment.
- 508. Misconduct of party or counsel.
- 509. — In general.
- 510. — Collusion as against party.
- 511. — Fraud in preventing defense or procuring judgment.

228. JUDGMENT

XI. COLLATERAL ATTACK.(Cont'd)

- 512. — Perjury or false testimony.
- 513. — Fraud or collusion as against creditors.
- 514. — Right of parties or privies to impeach judgment.
- 515. — Right of third persons in general to impeach judgment.
- 516. — Right of creditors to impeach judgment.
- 517. Matters available or questions presented in original action.

(C) PROCEEDINGS.

- 518. Collateral nature of proceeding in general.
- 519. Proceedings to enforce judgment.
- 520. Proceedings to revive judgment.
- 521. Proceedings to prevent enforcement of judgment.
- 522. Actions against parties.
- 523. Actions against ministerial officers.

XII. CONSTRUCTION AND OPERATION IN GENERAL.

- 524. Application of general rules of construction.
- 525. Recitals.
- 526. Construction with reference to pleadings or other proceedings.
- 527. Construction with reference to decision or findings.
- 528. Judgment in personam or in rem.
- 529. Parties liable.
- 530. — In general.
- 531. — Particular capacity.
- 532. — Joint or several liability.
- 533. Subject-matter.
- 534. Amount.
- 535. — In general.
- 536. — Interest.
- 537. — Medium of payment.
- 538. Time of taking effect.
- 539. Conditions.
- 539.5. Acceptance by prevailing party of part of judgment.

XIII. MERGER AND BAR OF CAUSES OF ACTION AND DEFENSES.

(A) JUDGMENTS OPERATIVE AS BAR.

- 540. Nature and requisites of former recovery as bar in general.
- 541. Courts or other tribunals rendering judgment.
- 542. — In general.
- 543. — Concurrent or co-ordinate jurisdiction.
- 544. — Special, limited, or inferior jurisdiction.
- 545. — Probate jurisdiction.
- 546. — Judges and judicial officers.
- 547. — Special tribunals, boards, and officers exercising judicial functions.
See also ADMINISTRATIVE LAW AND PROCEDURE \S 501.
- 548. — Appellate courts.
- 549. Nature of action or other proceeding.
- 550. — In general.
- 551. — Actions at law or suits in equity.
- 552. — Special proceedings other than actions.
- 553. — Summary proceedings.
- 554. — Actions relating to real property.
- 559. — Criminal prosecutions.
- 560. Nature, rendition, and form of judgment in general.
- 561. Grounds of adjudication.
- 562. Necessity for decision on merits.
- 563. Scope of adjudication.
 - (1). In general.
 - (2). What constitutes judgment on merits in general.
 - (3). Former action prematurely brought.
- 564. Finality of determination.
 - (1). In general.
 - (2). Interlocutory judgment or decree.
- 565. Judgment without prejudice.
- 566. Judgment expressly reserving rights.
- 567. Judgment by confession or on consent or offer.
- 568. Judgment by default.
- 569. Judgment on motion or summary proceeding in general.
- 570. Judgment on discontinuance, dismissal, or nonsuit.
 - (1). In general.

228. JUDGMENT

XIII. MERGER AND BAR OF CAUSES OF ACTION AND DEFENSES.(Cont'd)

- (2). Failure to perform condition precedent.
- (3). Voluntary dismissal or nonsuit in general.
- (4). Involuntary dismissal or nonsuit in general.
- (5). Merits of controversy in general.
- (6). Consent or agreement.
- (7). Dismissal or nonsuit as to part of defendants.
- (9). Want of jurisdiction.
- (10). Defect in parties.
- (11). Defects in pleading.
- (12). Want of prosecution.
- (13). Dismissal after verdict or judgment.
- (14). Dismissal of appeal or of action after appeal.
- (15). Dismissal after verdict and reversal or new trial ordered.
- (16). Retraxit.
- 571. Judgment on plea in abatement.
- 572. Judgment on demurrer or exceptions.
 - (1). In general.
 - (2). Sustaining demurrer or exceptions.
 - (3). Overruling demurrer or exceptions.
- 573. Verdict without judgment.
- 574. Decision or findings of court or referee without judgment.
- 575. Judgment by divided court.
- 576. Erroneous or irregular judgment.
 - (1). In general.
 - (2). Irregularity of proceedings.
 - (3). Effect of fraud in obtaining judgment.
- 577. Void judgment.
 - (1). In general.
 - (2). Want of jurisdiction.
- 578. Pendency of motion for new trial and grant thereof.
- 579. Pendency of action for relief against judgment.
- 580. Pendency of appeal.
- 581. Judgment vacated or reversed.

(B) CAUSES OF ACTION AND DEFENSES MERGED, BARRED, OR CONCLUDED.

- 582. Nature of merger.
- 583. Creation of new liability by judgment.
- 584. Nature and elements of bar or estoppel by former adjudication.
- 585. Identity of cause of action in general.
 - (.5). In general.
 - (1). Necessity in general.
 - (2). What constitutes identical causes.
 - (3). What constitutes distinct causes of action.
 - (4). Matters for defense in former action as cause of action in second.
- See also ACTION* ¶53.
- (5). Effect of change in law or facts.
- 586. Identity of subject-matter.
 - (.5). In general.
 - (1). Necessity.
 - (2). What constitutes.
- 587. Theory of action or recovery.
- 588. Grounds of action or recovery.
- 589. Nature and form of remedy.
 - (1). In general.
 - (2). Actions ex contractu and ex delicto.
- 590. Nature and extent of relief sought or granted.
 - (1). In general.
 - (2). Demands determined in former decision.
 - (3). Demands within scope of issues or litigation.
 - (4). Demands not in issue.
 - (5). Withdrawal of cause or election of remedies in former action.
- 591. Splitting cause of action.
See also ACTION ¶53.
- 591.1. — In general.
- 592. — Single and entire causes of action.
- 593. — Contracts in general.
- 594. — Contracts of employment.
- 595. — Accounts.
- 596. — Several notes or installments.
- 597. — Torts in general.
- 598. — Permanent and continuing injuries.
- 599. — Demands omitted by mistake.
- 600. Successive causes of action.
- 600.1. — In general.

228. JUDGMENT

XIII. MERGER AND BAR OF CAUSES OF ACTION AND DEFENSES.(Cont'd)

- 601. — Contracts in general.
- 602. — Breaches of continuing covenants.
- 603. — Several notes or installments.
- 604. — Taxes or license fee for successive periods.
- 605. — Torts in general.
- 606. — Continuing trespasses or nuisances.
- 608. Distinct causes of action from same act or transaction.
- 609. — In general.
- 610. — Injuries to person and to property.
- 611. — Distinct trespasses.
- 612. — Damages and penalties.
- 614. Causes of action on indebtedness and on collateral security.
 - (1). In general.
 - (2). Indebtedness and lien in general.
 - (3). Indebtedness and collateral note or bond.
 - (4). Note or bond and collateral security.
- 615. Extinguishment by one satisfaction.
- 616. Defenses concluded.
- 617. — In general.
- 618. — Identity of defenses.
- 619. — Defenses which might have been urged in former action.
- 620. — Same defense to separate actions on successive obligations or installments.
- 621. — Equitable defenses.
- 622. Grounds of set-off or counterclaim.
 - (5). In general.
 - (1). Matters litigated or in issue in former action.
 - (2). Matters which might have been litigated.

(C) PERSONS WHO MAY TAKE ADVANTAGE OF THE BAR.

- 624. Identity of persons in general.
- 625. Mutuality of estoppel.
- 626. Persons participating in or promoting action or defense.
- 627. Parties of record and privies in general.
- 628. Joint contractors.
- 629. Joint and several contractors.
- 630. Joint wrongdoers.

XIII. MERGER AND BAR OF CAUSES OF ACTION AND DEFENSES.(Cont'd)

- 631. Satisfaction by one jointly or severally liable.
- 632. Persons not parties or privies.
- 633. Waiver of bar.

XIV. CONCLUSIVENESS OF ADJUDICATION.

(A) JUDGMENTS CONCLUSIVE IN GENERAL.

- 634. Nature and requisites of former adjudication as ground of estoppel in general.
- 635. Courts or other tribunals rendering judgment.
- 636. — In general.
- 637. — Exclusive jurisdiction.
- 638. — Concurrent or co-ordinate jurisdiction.
- 639. — Special, limited, or inferior jurisdiction.
- 640. — Probate jurisdiction.
- 641. — Special tribunals, boards, and officers exercising judicial functions.
See also ADMINISTRATIVE LAW AND PROCEDURE \S 501.
- 642. — Appellate courts.
- 643. Nature of action or other proceeding.
- 644. — In general.
- 645. — Actions at law and suits in equity.
- 646. — Special proceedings other than actions.
- 647. — Summary proceedings.
- 648. — Civil or criminal proceedings.
- 649. Nature, rendition, and form of judgment in general.
- 650. Finality of determination.
- 651. Judgment by confession or on consent or offer.
- 652. Judgment by default.
- 653. Judgment on motion or summary proceedings in general.
- 654. Judgment on discontinuance, dismissal, or nonsuit.
- 655. Judgment on plea in abatement.
- 656. Judgment on demurrer or exceptions.
- 657. Verdict without judgment.
- 658. Decision or findings of court without judgment.
- 659. Judgment by divided court.
- 660. Erroneous or irregular judgment.

228. JUDGMENT

**XIV. CONCLUSIVENESS OF
ADJUDICATION.(Cont'd)**

- 660.5. Void judgments.
- 661. Pendency of motion for new trial and grant thereof.
- 662. Pendency of action for relief against judgment.
- 663. Pendency of appeal.
- 664. Judgment vacated or reversed.
- (B) PERSONS CONCLUDED.**
- 665. Identity of persons in general.
- 666. Mutuality of estoppel in general.
- 667. Parties of record.
- 668. — In general.
 - (1). In general.
 - (2). Who are parties in general.
 - (3). Persons not served with process.
- 669. — Nominal and unnecessary parties.
- 670. — Representative or official capacity.
- 671. — Unknown owners and others not named.
- 672. — Interveners and claimants.
- 673. — Effect of dismissal or severance as to parties.
- 674. — Effect of joinder of additional parties.
- 675. Persons participating in or promoting action or defense.
 - (1). In general.
 - (2). Participating through attorney.
 - (3). Participation as witness.
- 676. Persons submitting interests to adjudication.
- 677. Persons represented by parties.
- 678. Privity in general.
 - (1). In general.
 - (2). What constitutes privity in general.
 - (3). Several creditors of same debtor or estate represented.
 - (4). Several debtors of same creditor.
 - (5). Creditor of party.
 - (6). Receivers and persons represented.
 - (7). Voluntary association and its members.
- 679. Nature of estate or interest in subject-matter in general.
- 680. Cotenants.

**XIV. CONCLUSIVENESS OF
ADJUDICATION.(Cont'd)**

- 681. Successive estates or interests.
- 682. Vendor and purchaser.
 - (1). In general.
 - (2). Of personal property.
 - (3). On conveyance by judicial sale or decree of court.
- 683. Assignor and assignee.
- 684. Landlord and tenant.
- 685. Mortgagor and mortgagee.
- 686. Decedent and heirs or next of kin or devisees.
- 687. Decedent and executors or administrators.
- 688. Executors or administrators and devisees, legatees, heirs, or distributees.
- 689. Successive executors, administrators, or trustees.
- 690. Coheirs or codistributees and codevisees or colegatees.
- 691. Trustee and cestui que trust.
- 692. Guardian and ward.
- 693. Husband and wife.
- 694. Parent and child.
- 695. Principal and agent.
- 696. Employer and employee.
- 697. Bailor and bailee.
- 698. Parties to negotiable paper.
- 699. Persons primarily or ultimately liable.
 - (1). In general.
 - (2). Notice of former action and opportunity to defend.
- 700. Partners and surviving partners and representatives.
- 701. Corporations and corporate officers and stockholders.
- 702. Government, state, or municipality, and officers, citizens, or taxpayers.
- 703. Public officers and deputies and successors.
- 704. Coplaintiffs or codefendants.
- 705. Garnishees.
- 706. Persons not parties or privies.
- 707. — In general.
- 708. — Judgment as evidence in general.
- 709. — Judgment as evidence of its own existence.
- 710. — Judgment as evidence of property rights in general.

228. JUDGMENT

XIV. CONCLUSIVENESS OF ADJUDICATION.(Cont'd)

- 711. — Judgment as evidence of indebtedness.
- 712. — Judgment as evidence of title or link in chain of title.

(C) MATTERS CONCLUDED.

- 713. Scope and extent of estoppel in general.
 - (1). In general.
 - (2). Matters which might have been litigated.
 - (3). Diversity of parties combined with other elements.
- 714. Identity of subject-matter.
 - (1). In general.
 - (2). What constitutes.
 - (3). Judgment in action on several installments or causes of action from same transaction.
- 715. Identity of issues, in general.
 - (1). In general.
 - (2). What constitutes identity of issues.
 - (3). What constitutes diversity of issues.
- 716. Matters in issue.
- 717. — In general.
- 719. — Issues on pleadings.
- 720. — Matters actually litigated and determined.
- 721. — Indebtedness or liability.
- 723. Essentials of adjudication.
- 724. — In general.
- 725. — Facts necessary to sustain judgment.
 - (1). In general.
 - (2). Personal status or right.
 - (3). Title or claim to property in general.
 - (4). Title or claim to real property.
 - (5). Indebtedness or liability in general.
 - (6). Rights and liabilities under contracts.
- 728. — Incidental and collateral matters.
- 729. Matters withheld or withdrawn.
- 730. Matters in issue but not decided.
- 731. — In general.
- 732. — Title or right to property.
- 734. Matters not in issue.

XIV. CONCLUSIVENESS OF ADJUDICATION.(Cont'd)

- 735. — In general.
- 736. — Title or right to property in general.
- 738. Facts conceded or assumed.
- 739. Matters which could not have been adjudicated.
- 740. Judgment on matters not in issue.
- 741. Inferences from judgment.
- 742. Personal status or right.
- 743. Title or claim to property.
 - (1). In general.
 - (2). Real property.
 - (3). Personal property.
- 744. Rights and liabilities under contracts.
- 745. Remedies.
- 746. Waiver of estoppel.

(D) JUDGMENTS IN PARTICULAR CLASSES OF ACTIONS AND PROCEEDINGS.

- 747. Actions relating to real property.
 - (.5). In general.
 - (1). Ejectment.
 - (2). Partition.
 - (3). Trespass.
 - (4). Trespass to try title.
 - (5). Suit to quiet title.
 - (6). Forcible entry and detainer.
- 748. Actions relating to personal property.
- 749. Probate proceedings.
- 750. Proceedings for collection of taxes.
- 751. Criminal prosecutions.

XV. LIEN.

- 752. Nature of lien.
- 753. Statutory provisions.
- 754. Creation and existence of lien in general.
- 755. Court or other tribunal rendering judgment.
- 756. — In general.
- 757. — Special, limited, or inferior jurisdiction.
- 760. — United States courts.
- 761. Judgments which create liens.
- 762. — In general.
- 763. — Interlocutory judgments.
- 764. — Decrees in equity.
- 766. Recording and docketing judgment.
- 766.1. — In general.

228. JUDGMENT

XV. LIEN.(Cont'd)

- 767. — Sufficiency to create lien in general.
- 768. — Transcript or abstract.
 - (1). In general.
 - (2). Transcript from justice court.
- 769. — Index.
- 770. Issuance and record of execution.
- 771. Commencement of lien.
- 772. — In general.
- 773. — Relation back.
- 774. — Judgment nunc pro tunc.
- 775. Property or interest affected and extent of lien.
- 776. — In general.
- 777. — Nature of property.
- 778. — Situation of property.
- 779. — Title of judgment debtor.
 - (1). In general.
 - (2). Property previously transferred.
- 780. — Estate or interest of judgment debtor.
 - (1). In general.
 - (2). Equitable interests in general.
 - (3). Interests of parties to contract of sale.
 - (4). Equities of redemption and surplus proceeds of sale.
 - (5). Trust estates and naked legal title.
 - (6). Remainders and reversions.
 - (7). Property acquired by descent or devise.
- 781. — Property fraudulently conveyed.
- 782. — After-acquired property or title.
- 784. Priorities between judgments.
- 785. Priorities between judgment and other liens or claims.
 - (1). In general.
 - (2). Notice of prior liens or claims.
- 786. Priorities between judgment and conveyances.
- 787. — In general.
- 788. — Prior deed not recorded.
 - (1). In general.
 - (2). Effect of possession or notice.
- 789. Postponement of lien.
- 790. — In general.
- 791. — Sale under junior judgment.

XV. LIEN.(Cont'd)

- 792. Proceedings for determination of priority.
 - 793. Transfers of property subject to lien.
 - (1). In general.
 - (2). Notice of judgment lien.
 - (3). Subjection of vendor's remaining property.
 - (4). Successive transfers of different tracts.
 - (5). Proceedings to enforce lien.
 - 794. Duration of lien.
 - 795. — In general.
 - (1). In general.
 - (2). As against junior judgments.
 - (3). Continuance by issuance and levy of execution or garnishment.
 - (4). Continuance by revival of judgment.
 - (5). Continuance by action on judgment.
 - (6). Continuance by suit to enforce judgment or reach debtor's property.
 - (7). Continuance by matters preventing enforcement.
 - 796. — As against bona fide purchasers.
 - 797. — As against judgment debtor.
 - 798. — Effect of death of judgment debtor.
 - 799. Suspension of lien.
 - 800. Release, discharge, or extinguishment of lien.
 - (1). In general.
 - (2). Release of other property or security.
 - (3). Effect of division of state.
 - (4). Failure to issue, levy, or return execution or defects therein.
 - (5). Judicial sale of property.
 - (6). Proceedings in partition.
 - (7). Effect of appeal.
 - (8). Death of debtor.
 - 801. Foreclosure of lien.
 - 802. Rights and remedies of creditor after termination of lien.
- ### XVI. JUDGMENTS IN REM.
- 803. Nature of adjudication.
 - 804. — In general.

228. JUDGMENT

XVI. JUDGMENTS IN REM.(Cont'd)

- 805. — Judgments quasi in rem.
- 806. Authority of court or other tribunal.
- 807. Jurisdiction of subject-matter.
- 808. Rendition, form, and requisites.
- 809. Entry and record.
- 812. Operation and effect.
 - (1). In general.
 - (2). Merger and bar of cause of action.
 - (3). Conclusiveness.

XVII. FOREIGN JUDGMENTS.

- 813. Grounds of recognition in general.
- 814. Judgments of state courts.
- 814.1. — In general.
- 815. — Adjudications operative in other states; full faith and credit.
- 816. — Constitutional and statutory provisions.
- 817. — Nature and sufficiency of cause of action.
- 818. — Want of jurisdiction.
 - (1). In general.
 - (2). Sufficiency of notice, service of process, or appearance.
 - (3). Effect of want of jurisdiction.
 - (4). Presumptions as to jurisdiction.
 - (5). Conclusiveness of recitals in judgment record.
 - (6). Impeachment for want of jurisdiction.
 - (7). Admissibility of extrinsic evidence as to jurisdiction.
- 819. — Errors and irregularities.
- 820. — Fraud, perjury, collusion, and other misconduct.
- 821. — Merger and bar of causes of action.
- 822. — Conclusiveness of adjudication.
 - (1). In general.
 - (2). Persons concluded.
 - (3). Matters concluded.
 - (4). Extraterritorial effect on real estate.
- 823. — Enforcement in other states.
- 824. — Judgments in attachment.
- 825. — Judgments in rem.
- 826. — Judgments in exercise of special, limited, or inferior jurisdiction.

XVII. FOREIGN JUDGMENTS.(Cont'd)

- 827. — Judgments in summary proceedings.
- 828. Effect of judgments of state courts in United States courts.
 - 828.1. — In general.
 - 828.2. — Questioning jurisdiction.
 - 828.3. — Operation and effect in general.
 - 828.4. — Full faith and credit.
 - (1). In general.
 - (2). Particular matters.
 - 828.5. — Collateral attack.
 - (1). In general.
 - (2). What constitutes.
 - (3). Validity of judgment in general.
 - (4). Errors and irregularities.
 - (5). Fraud and duress.
 - 828.6. — Conclusiveness in general.
 - 828.7. — Nature of state tribunal.
 - 828.8. — Nature of state tribunal's proceedings.
 - 828.9. — Nature of judgment.
 - (1). In general.
 - (2). Consent or default.
 - (3). Decision on merits.
 - (4). Decision on pleadings.
 - (5). Dismissal and nonsuit.
 - (6). Finality.
 - (7). Reviewing court's determination.
 - 828.10. — Time; condition of cause.
 - (1). In general.
 - (2). Pendency of action or proceeding for review.
 - 828.11. — Validity of judgment.
 - (1). In general.
 - (2). Errors and irregularities in general.
 - (3). Contravention of federal constitution or laws.
 - (4). Evidence and fact questions.
 - 828.12. — Identity of parties and issues in general.
 - 828.13. — Persons who may assert conclusiveness.
 - 828.14. — Persons concluded.
 - (1). In general.
 - (2). Automobile cases, parties and insurers.

228. JUDGMENT

XVII. FOREIGN JUDGMENTS.(Cont'd)

- (3). Corporations, other artificial persons and their members, officers or receivers.
- (4). Decedents and persons interested in their estates.
- (5). Insurance policy holders.
- (6). Participation in state court proceedings.
- (7). Persons not parties or privies.
- (8). Represented parties; class actions.
- (9). Sureties; persons secondarily liable.
- (10). United States; governmental bodies and officers.
- (11). — In general.
- (12). — Tax authorities.
- 828.15. — Identity of cause of action or relief sought.
 - (1). In general.
 - (2). Splitting cause of action or defense.
- 828.16. — Issues or questions presented.
 - (1). In general.
 - (2). Matters unnecessary to decision.
 - (3). Matters which might have been determined.
 - (4). Matters which were not or could not have been adjudicated.
- 828.17. — Determination of issues involved and effect of judgment.
 - (1). In general.
 - (2). Effect of pleadings.
 - (3). Effect of evidence or fact findings.
 - (4). Effect of opinion.
- 828.18. — Estoppel to attack or rely on judgment.
- 828.19. — Relief against judgment.
- 828.20. — Particular matters and issues.
 - (1). In general.
 - (2). Patents, copyrights and trademarks.
 - (3). Property rights.
- 828.21. — Particular federal proceedings.
 - (1). In general.
 - (2). Bankruptcy.
 - (3). Tax proceedings.
- 828.22. — Pleading, evidence and enforcement.

XVII. FOREIGN JUDGMENTS.(Cont'd)

- 829. Effect of judgments of United States courts in state courts.
 - (.5). In general.
 - (1). Adjudications of federal courts operative in state courts.
 - (2). Questioning jurisdiction.
 - (3). Operation and effect.
 - (4). Pleading.
- 830. Judgments of courts of foreign countries.
- 830.1. — In general.
- 831. — In personam.
- 832. — In rem.
- 832.5. Judgments of tribal courts.
- 832.7. Effect of foreign judgments on tribal courts.

XVIII. ASSIGNMENT.

- 833. Assignability in general.
- 834. Statutory provisions.
- 835. Judgments assignable.
- 836. Persons who may assign or purchase.
- 837. Agreements to assign future judgments.
- 838. Partial assignment.
- 839. Mode and sufficiency of assignment in general.
- 840. Entry or record of assignment.
- 841. Consideration and validity.
- 842. Setting aside assignment.
- 843. Equitable assignment.
- 844. Operation and effect of transfer in general.
- 845. Priorities.
- 846. Rights and liabilities of parties.
- 846.1. — In general.
- 847. — As to judgment debtor in general.
- 848. — As affected by notice to judgment debtor of assignment.
- 849. — As to each other.
- 850. — As to third persons.

XIX. SUSPENSION, ENFORCEMENT, AND REVIVAL.

- 851. Judgments enforceable in general.
- 852. Suspension or stay of proceedings.
 - (1). In general.
 - (2). Security.
- 853. Dormant judgments.
 - (1). In general.

228. JUDGMENT

XIX. SUSPENSION, ENFORCEMENT, AND REVIVAL.(Cont'd)

- (2). Statutory provisions.
- (3). Necessity for and issuance of execution.
- (4). Return or entry of execution.
- (5). Acknowledgment or agreement between parties.
- 854. Proceedings to enforce judgment.
- 855. — In general.
- 856. — Scire facias.
- 857. Necessity for revival.
- 858. — In general.
- 859. — Dormant judgments.
- 860. — Death of party.
- 861. Judgments which may be revived.
- 862. Grounds for revival.
- 863. Defenses or grounds for opposition to revival.
- 864. Persons who may revive judgment.
 - (1). In general.
 - (2). Assignees.
- 865. Persons against whom judgment may be revived.
- 866. Jurisdiction and venue.
- 866.1. Time for revival; limitations.
- 867. Proceedings in cause operating as revival.
- 868. Proceedings to revive judgment in general.
 - (1). In general.
 - (2). Notice of proceedings.
- 869. Motions to revive judgment.
- 870. Scire facias to revive judgment.
 - (1). In general.
 - (2). Requisites and validity of writ.
 - (4). Parties defendant.
 - (5). Service and return.
 - (6). Pleading.
 - (7). Evidence and trial.
 - (8). Judgment and relief awarded.
 - (9). Amendment of writ.
 - (10). Defects, objections, and waiver.
- 871. Actions to revive judgment.
- 872. Operation and effect of revival.

XX. PAYMENT, SATISFACTION, MERGER, AND DISCHARGE.

- 874. Persons to whom payment may be made.
 - (1). In general.

XX. PAYMENT, SATISFACTION, MERGER, AND DISCHARGE.(Cont'd)

- (2). Clerk of court.
- 875. Mode and sufficiency of payment.
- 876. Presumption of payment from lapse of time.
 - (1). In general.
 - (2). Evidence to rebut presumption.
- 877. Evidence as to payment.
- 878. Payment by one or more jointly liable.
 - (1). In general.
 - (2). Assignment of judgment.
- 879. Payment by and assignment to surety.
- 880. Payment by person other than party.
- 881. Performance of specific acts required by judgment.
- 882. Tender.
- 883. Set-off of judgments.
 - (1). In general.
 - (2). Persons entitled to set-off.
 - (3). Judgments subject to set-off.
 - (4). Effect of appeal on right to set-off.
 - (5). Set-off of judgments of different courts.
 - (6). Set-off of judgments between different parties.
 - (7). Set-off of costs or judgments therefor and effect of lien.
 - (8). Effect of delay and waiver or estoppel.
 - (9). Assigned judgment as set-off.
 - (10). Set-off against assigned judgment.
 - (11). Actions and other proceedings to compel set-off.
 - (12). Set-off of judgment against claim.
 - (13). Set-off of claim against judgment.
 - (14). Operation and effect.
- 884. Merger of judgments.
- 885. Assignment to or for judgment debtor as extinguishment.
- 886. Release.
- 887. — In general.
- 888. — Of one or more jointly liable.
- 889. Agreements to satisfy judgment.
- 890. Satisfaction by execution or enforcement.

228. JUDGMENT

XX. PAYMENT, SATISFACTION, MERGER, AND DISCHARGE.(Cont'd)

- (1). In general.
- (2). Deficiency.
- 891. Satisfaction of one or more judgments for same cause of action.
- 892. Operation and effect of satisfaction.
- 893. Determination of right to proceeds.
- 894. Proceedings to compel satisfaction of record.
- 895. Entry of credits on partial satisfaction.
- 896. Damages and penalties for failure to enter satisfaction.
- 897. Entry of satisfaction of record.
- 898. Vacating entry of satisfaction.
 - (1). In general.
 - (2). Satisfaction unauthorized or obtained through fraud or mistake.
 - (3). Void or irregular sale.
 - (4). Proceedings.
- 899. Effect of entry of satisfaction.

XXI. ACTIONS ON JUDGMENTS.

(A) DOMESTIC JUDGMENTS.

- 900. Judgment as cause of action in general.
- 901. Statutory provisions.
- 902. Nature and form of remedy.
- 903. Judgments on which action may be brought.
- 904. Conditions precedent.
- 905. Leave to sue.
- 906. Defenses.
- 907. Persons entitled to sue.
- 908. Persons against whom action may be brought.
- 909. Jurisdiction and venue.
- 910. Time to sue and limitations.
 - (1). In general.
 - (2). Adjudications within statute.
 - (3). Accrual of cause of action.
 - (4). Circumstances tolling statute.
 - (5). Justice's judgment docketed in court of record.
- 911. Parties.
- 912. Pleading.
- 912.1. — In general.
- 913. — Declaration, complaint, or petition.

XXI. ACTIONS ON JUDGMENTS.(Cont'd)

- 914. — Plea or answer, and subsequent pleadings.
- 915. — Amendment, motions, and demurrer.
- 916. — Issues, proof, and variance.
- 917. Evidence.
- 917.1. — In general.
- 918. — Presumptions and burden of proof.
- 919. — Admissibility.
- 920. — Weight and sufficiency.
- 921. Trial.
- 922. Judgment, and enforcement thereof.
- 923. Appeal and error.
- 924. Costs.

(B) FOREIGN JUDGMENTS.

- 925. Foreign judgment as cause of action in general.
- 926. Statutory provisions.
- 927. Nature and form of remedy.
- 928. What law governs.
- 929. Judgments on which action may be brought.
- 930. Defenses.
- 931. Persons entitled to sue.
- 932. Persons against whom action may be brought.
- 933. Jurisdiction and venue.
- 934. Time to sue and limitations.
 - (1). In general.
 - (2). Constitutionality of statutes.
- 935. Parties.
- 936. Process and appearance.
- 937. Pleading.
- 937.1. — In general.
- 938. — Declaration, complaint, or petition.
- 939. — Plea or answer, and subsequent pleadings.
- 940. — Issues, proof, and variance.
- 941. Evidence.
- 941.1. — In general.
- 942. — Presumptions and burden of proof.
- 943. — Admissibility.
- 944. — Weight and sufficiency.
- 945. Trial.
- 946. Judgment, and enforcement thereof.
- 947. Appeal and error.

229. JUDICIAL SALES

XXII. PLEADING JUDGMENT AS ESTOPPEL OR DEFENSE.

948. Pleading in general.
 (.5). In general.
 (1). Necessity of pleading former adjudication in general.
 (2). Raising question by demurrer or motion.
 (3). Amended and supplemental pleadings.
 (4). Time for pleading former adjudication.
949. Allegations, admissions, and denials.
 (.5). In general.
 (1). Form and requisites in general.
 (2). Sufficiency of allegations in general.
 (3). Jurisdiction and venue.
 (4). Identity, privity, or interest of parties.
 (5). Identity of issues or causes of action.
 (6). Necessity of setting out record or judgment.
 (7). Former judgment as final or on the merits.
950. Issues, proof, and variance.
 (.5). In general.
 (1). Evidence admissible under pleadings in general.
 (2). Evidence admissible under general issue or general denial.
 (3). Variance.

XXIII. EVIDENCE OF JUDGMENT AS ESTOPPEL OR DEFENSE.

951. Evidence as to judgment in general.
 (.5). In general.
 (1). Presumptions and burden of proof.
 (2). Admissibility in general.
 (3). Parol evidence.
 (4). Weight and sufficiency.
952. Judgment as evidence though not pleaded.
953. Evidence as to identity of subject-matter.
954. Evidence as to identity of cause of action.
955. Evidence as to identity of parties.

XXIII. EVIDENCE OF JUDGMENT AS ESTOPPEL OR DEFENSE.(Cont'd)

956. Evidence as to identity of issues or matters decided.
 (.5). In general.
 (1). Presumption and burden of proof.
 (2). Admissibility in general.
 (3). Admissibility of charge or opinion of judge.
 (4). Parol evidence.
 (5). Weight and sufficiency of evidence.
957. Evidence to impeach judgment.
958. Trial and review.
 (1). In general.
 (2). Questions for jury.

229. JUDICIAL SALES

SUBJECTS INCLUDED

Sales under orders or judgments of courts in general
Manner, conduct, validity and effect of such sales
Confirming or vacating, setting aside, etc., the sale, and resale
Conveyances to purchasers, and title, rights and liabilities of purchasers at such sales
Redemption therefrom

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Execution sale or sheriff's sale, see CREDITORS' REMEDIES
Indian property, see INDIANS ⇨200
Particular classes of proceedings or writs, judicial sales in or under, see CREDITORS' REMEDIES, MORTGAGES AND DEEDS OF TRUST, PARTITION, TAXATION, and other specific topics
Particular persons in fiduciary capacity, sales under court order or court supervision, see EXECUTORS AND ADMINISTRATORS, GUARDIAN AND WARD, RECEIVERS and other specific topics

229. JUDICIAL SALES

1. Nature and essentials in general.
2. Statutory provisions.
3. Judgment, order, or decree.
4. Appointment and qualification of officer.
5. Levy on and custody of property.
6. Appraisal.
7. Authority and powers in making sale in general.
8. Mode of sale.
9. Place.
10. Time.
11. Notice.
12. Postponement.
13. Sale in parcels.
14. Order of offering for sale.
15. Conduct in general.
16. Terms and conditions.
17. Persons who may purchase.
18. Bids.
 19. — In general.
 20. — Acceptance or rejection.
 21. Payment of bid.
 22. — In general.
 23. — Purchase by creditor.
 24. Failure to comply with bid.
 25. — In general.
 26. — Resale.
 27. — Liabilities of bidders.
 - (.5). In general.
 - (1). Title which purchaser may be required to take.
 - (2). Loss on resale and taxes and expenses paid.
28. — Summary proceedings to compel payment.
29. — Actions on bids.
30. Report or return.
31. Confirmation.
 - (1). In general.
 - (2). Proceedings for confirmation and objections thereto.
 - (3). Operation and effect.
32. Persons who may question validity.
33. Ratification of invalid sale.
- 33.5. Curative statutes.
34. Opening or vacating.
 - 34.1. — In general.
 35. — Grounds in general.
 36. — Defects or irregularities in judgment, decree, or order.
 37. — Irregularities or misconduct affecting sale.
 38. — Mistake, surprise, or accident.
 39. — Inadequacy of price.
 40. — Inadequacy of price in connection with other objections.
 41. — Advance on bid.
 42. — Application, and proceedings thereon.
 43. — Hearing and determination.
 44. — Security or other conditions.
 45. Actions to set aside.
 46. Resale on setting aside.
 47. Collateral attack.
 48. Operation and effect in general.
 49. Title and rights of purchasers.
 50. — In general.
 - (1). In general.
 - (2). Liens, charges, and incumbrances.
 51. — Possession.
 52. — Relief against defects in title or property.
 53. — Defects or irregularities in judgment, decree, order, or sale.
 54. — Modification, vacation, or reversal of judgment, decree, or order.
 55. — Opening or vacation of sale.
 56. Liabilities of purchasers.
 57. Assignees of certificates of sale.
 58. Grantees of purchasers.
 59. Redemption.
 60. Actions to redeem.
 61. Conveyance to purchaser.
 62. Proceeds.
 63. Fees and expenses.
 64. Wrongful sale.

230. JURY

SUBJECTS INCLUDED

Bodies of persons sworn to inquire into and determine matters of fact in judicial proceedings, more particularly petit juries or

230. JURY

trial juries, selected and sworn to try issues of fact, in civil or criminal proceedings, on the evidence presented

Right to trial by jury

Nature and constitution of different kinds of juries

Qualifications, exemption, selection, summoning and compensation of jurors in general

Competency of jurors, and challenges and trial thereof

Impaneling and swearing jury for trial of particular cause

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Admiralty cases, see ADMIRALTY

Advisory jury, and jury determining special issues in cases ordinarily tried by court, see EQUITY, TRIAL, DIVORCE, WILLS

Civil rights, discriminatory exclusion from jury, see CIVIL RIGHTS

Condemnation or eminent domain, jury assessing compensation, see EMINENT DOMAIN

Grand jury, constitution, etc., and proceedings, see GRAND JURY, INDICTMENT AND INFORMATION

Misconduct of counsel on voir dire examination or in other proceedings, see CRIMINAL LAW, TRIAL

Misconduct of or affecting jury as grounds for new trial or reversal, see APPEAL AND ERROR, CRIMINAL LAW, NEW TRIAL

Proceedings at trials by jury, including province of court and jury, instructions and verdict, see CRIMINAL LAW, TRIAL and specific topics

I. NATURE AND CONSTITUTION OF JURIES, ¶1-8.

II. RIGHT TO TRIAL BY JURY, ¶9-37.

III. QUALIFICATIONS OF JURORS AND EXEMPTIONS, ¶38-56.

IV. SUMMONING, ATTENDANCE, DISCHARGE, AND COMPENSATION, ¶57-82.

V. COMPETENCY OF JURORS, CHALLENGES, AND OBJECTIONS, ¶83-142.

VI. IMPANELING FOR TRIAL, AND OATH, ¶143-150.

I. NATURE AND CONSTITUTION OF JURIES.

1. Nature and functions in general.
2. Constitutional and statutory provisions.
3. Constitution in general.
4. Number of jurors.
5. Apportionment of jurors.
6. Special or struck juries.
7. Foreign juries.
8. Mixed juries.

II. RIGHT TO TRIAL BY JURY.

9. Nature and scope in general.
10. Constitutional and statutory provisions.
- 10.5. Persons entitled.
11. Courts in which trial by jury is required.
 - (1). In general.
 - (2). Probate courts.
 - (3). Federal courts.
 - (4). Courts-martial.
 - (5). Application of provisions of federal Constitution to state courts.
 - (6). Jurisdiction of inferior courts of cases in which trial by jury is guaranteed.
12. Nature of cause of action or issue in general.
 - (1). In general.
 - (1.1). Common law or statutory actions, in general.
 - (1.2). Sovereigns, actions against.
 - (1.3). Complex cases.
 - (3). Issues of law or fact in general.
 - (4). Contracts liquidating debt or damages.
 - (5). Defenses.
 - (6). Plea of payment.
13. Legal or equitable actions or issues.
 - (1). In general.
 - (2). Power to regulate.
 - (3). Application of constitutional provisions in general.
 - (4). Statutory provisions.
 - (5). Issues of fact in equitable actions.
 - (5.1). — In general.
 - (6). — Set-off and counterclaim.
 - (7). — Fraud.
 - (8). — Question of title.
 - (9). — Assessment of damages.
 - (10). — Issues in partition.

230. JURY

II. RIGHT TO TRIAL BY JURY.(Cont'd)

- (11). — Issues in suits for foreclosure of liens and mortgages.
- (12). — Issues in suits for injunction and abatement of nuisances.
- (13). — Issues in specific performance.
- (19). Interpleader or intervention.
- (20). Particular proceedings in equitable actions.
- 14. Particular actions and proceedings.
 - (1). In general.
 - (1.1). Patent and copyright cases.
 - (1.2). Antitrust and trade regulation cases.
 - (1.3). Stockholders and investors, actions by.
 - (1.4). Employment and labor relations cases.
 - (1.5). Civil rights actions.
 - (2). Actions for the recovery of money only or of specific real or personal property.
 - (3). Accounting and settlement.
 - (4). Establishment and foreclosure of liens or mortgages.
 - (5). Enforcement of trust.
 - (6). Cancellation and reformation of instruments.
 - (7). Creditors' suits, and suits to set aside fraudulent conveyances.
 - (9). Quieting title and determination of adverse claims.
 - (10). Partition.
 - (11). Injunction in general.
 - (12). Nuisance abatement cases.
 - (12.5). Declaratory judgment cases.
 - (13). Specific performance.
 - (14). Enforcement of judgment.
- 14.5. Multiple parties or issues.
 - (1). In general.
 - (2). Joinder of legal and equitable issues.
 - (2.1). — In general.
 - (3). — Legal defense, set-off, or counterclaim.
 - (4). — Equitable defense, set-off, or counterclaim.
- 15. Amount or value in controversy.

II. RIGHT TO TRIAL BY JURY.(Cont'd)

- 16. Particular proceedings in civil actions.
 - (1). In general.
 - (5). Execution.
 - (6). Proceedings to enforce or discharge attachment or garnishment.
 - (8). Motion to vacate judgment.
 - (9). Attorney fee determinations.
- 17. Trial on appeal or other proceeding for review.
 - (1). In general.
 - (2). Appeals from justices of the peace.
 - (3). Probate matters.
 - (4). Condemnation proceedings.
- 18. Particular forms or kinds of civil actions; summary proceedings.
- 19. Civil proceedings other than actions; special proceedings.
 - (1). In general.
 - (3). Mandamus.
 - (6.5). Mental health determinations.
 - (7). Administration of estates of decedents.
 - (7.5). Probate and contest of wills.
 - (9). Bankruptcy and insolvency proceedings.
 - (11). Eminent domain.
 - (12). Suspension or removal of officers.
 - (13). Issuance and cancellation of licenses.
 - (15). Seizures, penalties, and forfeitures.
 - (17). Proceedings under tax laws.
 - (18). Discipline of attorney.
 - (19). Habeas corpus.
- 19.5. Dependent, neglected, or delinquent children, proceedings involving.
- 19.10. Domestic relations cases.
 - (1). In general.
 - (2). Paternity cases.
- 20. Criminal prosecutions.
- 21. — In general.
 - 21.1. — Application of constitution in general.
 - 21.2. — Statutory provisions.
 - 21.3. — Commitment to industrial schools or reformatories.

230. JURY

II. RIGHT TO TRIAL BY JURY.(Cont'd)

- 21.4. — Habitual criminals.
- 21.5. — Mental condition, determination of.
- 22. — Misdemeanors and minor offenses.
 - (.5). In general.
 - (1). Application of constitutional provisions in general.
 - (2). Offenses in general.
 - (3). Disorderly conduct and drunkenness.
 - (4). Sale of intoxicating liquors.
- 23. — Violations of municipal ordinances.
 - (.5). In general.
 - (1). Application of constitutional and statutory provisions in general.
 - (2). Offenses.
- 24. — Assessment of punishment.
- 24.1. — Probation and revocation thereof.
- 24.2. — Other particular proceedings.
- 24.5. Contempt proceedings.
- 25. Demand for jury.
 - (1). Right to demand jury trial in general.
 - (2). Necessity for demand.
 - (3). Necessity for demand in criminal prosecutions.
 - (4). Excuse for failure to make demand.
 - (5). Notice of demand.
 - (6). Time for making demand.
 - (7). Time for making demand in justice's court.
 - (8). Form and sufficiency of demand.
 - (9). Effect of demand made at previous trial or term of court.
 - (10). Special or struck jury.
 - (10.5). Withdrawal of demand.
 - (11). Determination of right.
- 26. Payment or deposit of jury fees.
- 27. Waiver of right.
- 27.1. — In general.
- 28. — In civil cases.
 - (1). In general.
 - (2). Statutory provisions.
 - (3). Right to waive jury.
 - (4). Necessity of formal waiver.
 - (5). Form and sufficiency of waiver.
 - (6). Submission to court.

II. RIGHT TO TRIAL BY JURY.(Cont'd)

- (7). Submission to arbitration.
- (8). Noticing or transferring case for trial on court or jury docket.
- (9). Failure to appear or participate in trial.
- (10). Participating in proceedings after refusal of jury.
- (11). Choice of remedies.
- (12). Consent to reference.
- (13). Number of jurors.
- (14). Special jury.
- (15). Evidence of waiver.
- (16). Record of waiver.
- (17). Operation and effect of waiver.
- 29. — In criminal cases.
 - (1). In general.
 - (2). Right to waive jury in general.
 - (3). Misdemeanors and minor offenses.
 - (4). On demurrer or plea of guilty.
 - (5). Number of jurors.
 - (6). Form and sufficiency.
 - (7). Operation and effect.
- 30. Denial or infringement of right.
- 31. — In general.
- 31.1. — Statutory provisions.
- 31.2. — Rights of action and procedure in civil cases.
 - (1). In general.
 - (2). In equity.
 - (3). Pleading.
 - (4). Judgment.
 - (5). New trial.
 - (6). Compulsory reference.
 - (7). Restrictions on right to appeal.
- 31.3. — Practice and procedure in criminal cases.
 - (1). In general.
 - (2). Restrictions on right of appeal.
 - (3). Requirement of bail.
- 31.4. — Proceedings for procurement of jury trial.
- 31.5. — Costs.
- 32. — Number of jurors.
 - (1). In general.
 - (2). Jury of less than twelve persons.
 - (3). Decrease in numbers pending trial.

230. JURY

II. RIGHT TO TRIAL BY JURY.(Cont'd)

- (4). Concurrence of less than whole number.
- 33. — Constitution and selection of jury.
 - (1). In general.
 - (1.1). Representation of community, in general.
 - (1.2). Particular groups, inclusion or exclusion.
 - (1.10). — In general.
 - (1.15). — Race.
 - (1.20). — Age.
 - (1.25). — Sex.
 - (2). Competence for trial of cause.
 - (2.10). — In general.
 - (2.15). — View of capital punishment.
 - (3). Selection from vicinage.
Territorial limitations as effecting exclusion of particular groups, see §33(1.2-1.25), above.
 - (4). Summoning and impaneling; voir dire.
Procedures as operating to exclude particular groups, see §33(1.2-1.25), above.
 - (5). Challenges and objections.
 - (5.10). — In general.
 - (5.15). — Peremptory challenges.
 - (5.20). — Standing and waiver.
 - 34. — Restriction or invasion of functions of jury.
 - (1). In general.
 - (2). Weight and sufficiency of evidence.
 - (3). Taking case or question from jury.
 - (4). Requiring special verdict.
 - (5). Sentencing matters.
 - (6). — In general.
 - (7). — Particular cases in general.
 - (8). — Drug offenses.
 - (9). — Death penalty.
 - (10). — Weapons.
 - 35. — Effect of provision for other remedy.
 - (1). In general.
 - (2). Appeal to court where jury trial may be had.
 - 36. — Effect of reservation of right of re-submission to jury.
 - 37. — Re-examination or other review of questions of fact tried by jury.

III. QUALIFICATIONS OF JURORS AND EXEMPTIONS.

- 38. Eligibility in general.
- 39. Constitutional and statutory provisions.
- 40. Physical capacity.
- 41. Age.
- 42. Intelligence and educational qualifications.
- 43. Knowledge of language.
- 44. Religious belief.
- 45. Prosecution for or conviction of crime.
- 46. Citizenship and loyalty.
- 47. Residence.
- 48. Property qualification in general.
- 49. Freeholders.
- 50. Householders.
- 51. Payment of taxes.
- 52. Qualifications as voter.
- 53. Prior service as juror.
- 54. Qualifications for service in particular courts.
- 55. Exemptions.
- 56. Effect of disqualification or exemption of juror.

IV. SUMMONING, ATTENDANCE, DISCHARGE, AND COMPENSATION.

- Procedures as effecting exclusion of groups, see §33(1-5.20), above.*
- 57. Nature and form of proceeding in general.
- 58. Constitutional and statutory provisions.
- 59. Jury commissioners or other officers or boards.
 - (.5). In general.
 - (1). Appointment and qualification.
 - (2). De facto officers.
 - (3). Interest or bias as disqualification to act.
 - (4). Term of office.
 - (5). Compensation.
- 60. Jury list.
- 61. — In general.
- 62. — Procurement and selection of names.
 - (.5). In general.
 - (1). Officers authorized or required to act in making list.
 - (2). Time or place of meeting or selection.

230. JURY

**IV. SUMMONING, ATTENDANCE,
DISCHARGE, AND COM-
PENSATION.(Cont'd)**

- (3). Mode of procedure.
- 63. — Making and requisites of list and record.
- 64. — Replacing names and revision of list.
- 65. Jury wheel or box.
- 66. Selection and drawing of regular panel.
 - (1). In general.
 - (2). What officer may or must act.
 - (3). Interference with selection.
 - (4). Time and place.
 - (5). Record of drawing.
 - (6). Size of panel.
 - (7). General panel for use in different departments or divisions of court.
- 67. Summoning jurors.
 - (.5). In general.
 - (1). Issuance and requisites of writ of venire or other process or order.
 - (2). Service of writ or notice.
 - (3). Officers who may summon.
- 68. Return of venire or other process or order.
- 69. Filing and publication of list of jurors summoned.
- 70. Special venire or panel.
 - (.5). In general.
 - (1). Grounds for ordering.
 - (2). Right to special venire.
 - (3). Application and order for special venire.
 - (4). Issuances and requisites of venire.
 - (5). Joining distinct panels drawn for different departments of court.
 - (6). Time for drawing and notice thereof.
 - (7). Size of panel.
 - (8). Selection or drawing of jurors.
 - (9). Open venire.
 - (10). Qualifications of jurors on special venire.
 - (11). Who may summon.
 - (12). Return.
- 71. Special or struck jury.
- 72. Talesmen or additional jurors.

**IV. SUMMONING, ATTENDANCE,
DISCHARGE, AND COM-
PENSATION.(Cont'd)**

- (.5). In general.
- (1). When proper.
- (2). Summoning in advance.
- (3). Selection of jurors.
- (4). Ordering jurors from other courts.
- (5). Number to be summoned.
- (6). Who may summon.
- (7). Oath of officer.
- (8). Filing or publication of list of jurors summoned.
- 73. Compelling attendance of jurors.
- 74. Punishment for failure to attend or serve.
- 75. Excusing and discharging jurors from attendance.
 - (1). In general.
 - (2). Discretion of court.
 - (3). Conflicting public duties.
 - (4). Who may excuse.
 - (5). Application for excuse.
 - (6). Liability to recall.
- 76. Term of service; post-trial contacts.
- 77. Compensation of jurors.
 - (.5). In general.
 - (1). Right to compensation and amount thereof.
 - (2). Liability of county or municipality and payment.
- 78. Drawing jurors for trial of cause.
- 79. — In general.
- 79.1. — Manner of drawing in general.
- 79.2. — Order of calling names.
- 79.3. — Right to particular juror or jury.
- 80. — Right to full panel to select from.
- 81. — Number of jurors to be drawn or presented before challenge.
- 82. Effect of errors and irregularities.
 - (.5). In general.
 - (1). Jury list.
 - (2). Selection, drawing, and summoning.
 - (3). Special venire.
 - (4). Talesmen or additional jurors.
- V. COMPETENCY OF JURORS,
CHALLENGES, AND
OBJECTIONS.**
- 83. Competency for trial of issues in general.

230. JURY

V. COMPETENCY OF JURORS,
CHALLENGES, AND OB-
JECTIONS.(Cont'd)

- (1). In general.
- (2). Witnesses.
- (3). Official position.
84. Constitutional and statutory provisions.
85. Discretion of court.
86. Pecuniary interest.
87. — In general.
88. — Member of association or stockholder of corporation.
89. — Citizen or taxpayer of municipality.
90. Relationship to party or person interested.
91. Relationship to attorney or counsel.
92. Business connection or transactions with party or attorney.
93. Prior service as juror.
94. — In general.
95. — In same or similar cause.
96. Interest in other cause pending.
97. Bias and prejudice.
 - (1). In general.
 - (2). Personal relations in general.
 - (3). Membership in association or organization.
 - (4). Influence on verdict.
98. Formation and expression of opinion as to cause.
99. — In general.
 - 99.1. — Knowledge of matters in general.
 - 99.2. — Opinion as to particular matters.
 - 99.3. — Impressions.
 - 99.4. — Unqualified or fixed opinions.
 - 99.5. — Unexpressed opinions.
 - 99.6. — Inconsiderate or purposeless remarks.
 - 99.7. — Source of information.
100. — Pretrial publicity.
101. — Evidence at former trial.
102. — Evidence at trial of other cause.
103. — Influence of opinion on verdict.
 - (1). In general.
 - (2). Effect on presumption of innocence.
 - (3). Belief of juror that opinion will not affect verdict in general.
 - (4). Qualified or hypothetical opinion.

V. COMPETENCY OF JURORS,
CHALLENGES, AND OB-
JECTIONS.(Cont'd)

- (5). Opinion requiring evidence to remove.
- (6). Opinion which will yield to evidence.
- (7). Opinion derived from reading or hearing evidence in cause.
- (8). Opinion founded on statements of parties, witnesses, or persons claiming to know the facts.
- (9). Opinion as to particular matters or issues.
- (10). Opinion derived from prior service as juror.
- (11). Opinion founded on rumor or newspaper reports.
- (11.1). — In general.
- (12). — Qualified or hypothetical opinion.
- (13). — Opinion requiring evidence to remove.
- (14). — Opinion which will yield to evidence.
- (15). Doubt as to whether opinion will affect verdict.
104. Personal opinions and conscientious scruples.
- 104.1. — In general.
105. — Subject-matter of cause.
 - (1). In general.
 - (2). Crimes and criminals.
 - (3). Sale of intoxicating liquors.
 - (4). Questions of law.
106. — Particular defenses.
107. — Weight and effect of evidence.
108. — Punishment prescribed for offense.
109. Rejection on court's own motion.
110. Waiver of right to object or challenge.
 - (.5). In general.
 - (1). Failure to investigate, challenge, or object in general.
 - (2). Citizenship or residence.
 - (3). Electors, freeholders, or taxpayers.
 - (4). Age of juror.
 - (5). Pecuniary interest and prejudice.
 - (6). Relationship or business connection.
 - (7). Prior service as juror.

230. JURY

**V. COMPETENCY OF JURORS,
CHALLENGES, AND OB-
JECTIONS.(Cont'd)**

- (8). Formation and expression of opinion.
- (9). Summoning, drawing, and impaneling.
- (10). Appearance in cause.
- (11). Passing or tender of juror.
- (12). Acceptance of juror as waiver of challenge.
- (13). Effect of exercise of challenges.
- (14). Effect of failure to exhaust peremptory challenge.
- (15). Withdrawal of challenge.
- (16). Peremptory challenges.
- (17). Special or struck jury.
- 112. Order of challenges on different grounds.
- 113. Order of parties in making challenges.
- 114. Challenge to panel or array, and motion to quash venire.
- 115. — In general.
- 116. — Grounds.
- 117. — Time.
- 118. — Making and sufficiency.
- 119. — Exception to or denial of challenge.
- 120. — Affidavits and other evidence.
- 121. — Trial and determination.
- 122. Requiring juror to stand aside.
- 124. Challenges for cause.
- 125. — In general.
- 126. — Grounds.
- 127. — Time.
- 128. — Order of challenges.
- 129. — Making and sufficiency.
- 130. — Exception or denial.
- 131. — Examination of juror.
 - (1). In general.
 - (2). Discretion of court.
 - (3). Laying foundation for peremptory challenges.
 - (4). Extent of examination.
 - (5). Pecuniary interest.
 - (6). Bias and prejudice.
 - (7). Formation and expression of opinion.
 - (8). Personal opinions and conscientious scruples.

**V. COMPETENCY OF JURORS,
CHALLENGES, AND OB-
JECTIONS.(Cont'd)**

- (9). Statutory interrogations.
- (10). Examination by court.
- (11). Re-examination.
- (12). Rights and privileges of jurors.
- (13). Mode of examination.
- (14). Oath.
- (15). Form and sufficiency of questions propounded.
- (15.1). — In general.
- (16). — Formation and expression of opinion.
- (17). — Personal opinions and conscientious scruples.
- (18). Form and sufficiency of answers.
- 132. — Evidence.
- 133. — Trial and determination.
- 134. Peremptory challenges.
- 135. — In general.
- 136. — Number.
 - (.5). In general.
 - (1). Statutory provisions.
 - (2). Civil actions and proceedings.
 - (3). As affected by joinder of parties or actions.
 - (4). Criminal prosecutions.
 - (5). Nature of offense and extent of punishment.
 - (6). Codefendants.
 - (7). Number allowed state in prosecutions of joint defendants.
 - (8). Several counts in same indictment.
 - (9). Disabling of jurors pending trial.
- 137. — Time.
 - (1). In general.
 - (2). Discretion of court.
 - (3). After acceptance, passing, or tender of juror.
 - (4). After swearing.
- 138. — Order and exhaustion of challenges.
 - (.5). In general.
 - (1). Discretion of court.
 - (2). Order of challenges.
 - (3). Exhaustion of challenges.
- 139. — Making and sufficiency.
- 140. — Operation and effect.
- 142. Objections and exceptions.

230. JURY

VI. IMPANELING FOR TRIAL, AND OATH.

- 143. Constitution of jury for trial of cause.
- 144. Designation and identity of jurors.
- 145. Effect of service on jury of person not drawn therefor.
- 146. Impaneling and organization in general.
- 147. Appointment of foreperson.
- 148. Oath.
 - (1). In general.
 - (2). When administered.
 - (3). Reswearing jury.
 - (4). Form and sufficiency.
- 149. Discharge of juror or jury pending trial.
- 150. Objections and exceptions.

231. JUSTICES OF THE PEACE

SUBJECTS INCLUDED

Magistrates and other inferior judicial officers authorized to act as conservators of the peace with subordinate judicial powers within limited districts

Appointment, qualification, tenure, and removal of such officers, and ex officio and de facto justices of the peace

Their jurisdiction and powers, proceedings before them in general, and review thereof

Their rights, duties, and liabilities

Liabilities on their official bonds

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Courts of record, justices of the peace as members of, see COURTS

Particular ex officio functions—

Acknowledgments or proof of deeds, etc., see ACKNOWLEDGMENT

Administering oaths, see OATH

Affidavits, see AFFIDAVITS

Solemnizing marriages, see MARRIAGE AND COHABITATION

Taking depositions, see PRETRIAL PROCEDURE

Particular proceedings in exercise of preventive and provisional jurisdiction, see PAR-

ENT AND CHILD II, PROTECTION OF ENDANGERED PERSONS, CRIMINAL LAW, ARREST, BAIL, SEARCHES AND SEIZURES

United States Magistrate Judges, see UNITED STATES MAGISTRATE JUDGES

- I. APPOINTMENT, QUALIFICATION, AND TENURE, ¶1-11.
- II. RIGHTS, DUTIES, AND LIABILITIES, ¶12-30.
- III. CIVIL JURISDICTION AND AUTHORITY, ¶31-62.
- IV. PROCEDURE IN CIVIL CASES, ¶63-138.
- V. REVIEW OF PROCEEDINGS, ¶139-210.
 - (A) APPEAL AND ERROR, ¶139-191.
 - (B) CERTIORARI, ¶192-210.

I. APPOINTMENT, QUALIFICATION, AND TENURE.

- 1. Nature of office.
- 2. Creation and abolition of office.
- 3. Appointment or election.
- 4. Eligibility.
- 5. Qualification.
- 6. De facto justices.
- 7. Justices ex officio.
- 8. Term of office, vacancies, and holding over.
- 9. Resignation or abandonment of office.
- 10. Suspension or removal.
- 11. Title to and possession of office.

II. RIGHTS, DUTIES, AND LIABILITIES.

- 12. Privileges.
- 13. Disabilities.
- 14. Compensation and fees.
- 15. — In general.
- 16. — Particular proceedings and services.
- 17. — Accounting for and disposition of fees.
- 18. — Recovery of fees.
- 19. Duties as conservators of the peace.
- 20. Judicial functions and duties in general.
- 21. Ministerial functions and duties.
- 23. Liabilities for official acts.
- 24. — In general.
- 25. — Judicial acts.
- 26. — Ministerial acts.

231. JUSTICES OF THE PEACE

II. RIGHTS, DUTIES, AND LIABILITIES.(Cont'd)

- 27. — Negligence or misconduct.
- 28. — Actions.
 - (1). In general.
 - (2). Notice or demand.
 - (3). Pleading and evidence.
- 29. Liabilities on official bonds.
 - (1). In general.
 - (2). Actions.
- 30. Criminal responsibility.

III. CIVIL JURISDICTION AND AUTHORITY.

- 31. Nature and scope of jurisdiction in general.
- 32. Constitutional and statutory provisions.
- 33. Officers invested with jurisdiction.
- 34. Nature of subject-matter in general.
 - (1). In general.
 - (2). Penalties and forfeitures.
 - (3). Enforcement of awards.
 - (4). Abatement of nuisances.
- 35. Actions involving taxes.
- 36. Actions involving real property.
 - (1). In general.
 - (2). Particular actions.
 - (2.1). — In general.
 - (3). — Actions for trespass or other injuries to land.
 - (4). — Actions for purchase price of land.
 - (5). — Actions for rent or for use and occupation.
 - (6). — Actions for recovery of possession.
 - (7). — Forcible entry and detainer, and recovery of possession by landlord.
 - (8). — Actions for obstructing highways and easements.
 - (9). — Actions for breach of contract or covenants.
 - (10). — Actions by vendee to recover purchase money paid.
 - (11). — Actions respecting boundaries and division fences.
 - (12). Title admitted or not necessarily involved.
- 37. Actions on contracts.
 - (1). In general.
 - (2). Notes, bonds, and covenants.

III. CIVIL JURISDICTION AND AUTHORITY.(Cont'd)

- (3). Bailment and carriage of goods.
 - (4). Sales.
 - (5). Stockholder's liability.
 - (6). Implied contracts.
 - (7). Contract or tort.
- 38. Actions for torts.
 - (.5). In general.
 - (1). Actions for assaults and personal injuries.
 - (3). Actions on the case, trespass, conversion and civil theft, and other actions for loss of or injuries to property.
 - (4). Actions against officers for negligence or misconduct.
 - (5). Nuisance.
- 39. Character of parties.
 - (.5). In general.
 - (1). Corporations.
 - (2). Municipal corporations and public officers.
 - (3). Executors and administrators.
 - (4). Married women.
 - (5). Assignee.
 - (6). Infants and insane persons.
- 39.5. Jurisdiction of cause of action.
- 40. Domicile or residence of parties.
- 41. Amount or value in controversy.
- 42. — In general.
- 43. — Requisite amount or value.
 - (1). In general.
 - (2). Actions for torts.
 - (3). Actions to recover personal property.
 - (4). Actions for possession of real property.
 - (5). Proceedings to recover rent.
- 44. — Determination of amount or value.
 - (1). In general.
 - (2). Particular actions and proceedings.
 - (3). Actions for torts.
 - (4). Actions on bills and notes.
 - (5). Actions on bonds.
 - (6). Actions to recover personal property.
 - (7). Attachment and garnishment.
 - (8). Interest, costs, and attorney fees.

231. JUSTICES OF THE PEACE

III. CIVIL JURISDICTION AND AUTHORITY.(Cont'd)

- (9). Several or split claims exceeding in aggregate limit of jurisdiction.
- (10). Remission or abandonment of part of claim.
- (11). Original amount as affected by partial payments or reduction from other causes.
- 45. Set-offs and counterclaims.
- 46. Nature of remedy or relief in general.
 - (1). In general.
 - (2). Proceedings for recovery of personal property.
 - (3). Mandamus.
- 47. Equitable jurisdiction and relief.
 - (1). In general.
 - (2). Enforcement of liens.
 - (3). Settlement of partnership affairs.
- 48. Attachment and garnishment.
- 49. Civil proceedings other than actions.
- 50. Consent of parties to jurisdiction.
- 51. Ancillary and incidental jurisdiction.
- 52. Territorial extent.
- 53. Exercise of jurisdiction beyond territorial limits.
- 54. Loss or divestiture of jurisdiction.
 - (1). In general.
 - (2). Absence or delay of justice.
 - (3). Absence or nonappearance of parties.
 - (4). Continuance or adjournment as ousting jurisdiction.
- 55. Powers after expiration of term.
- 56. Powers of successor as to proceedings before former justice.
- 57. Disqualification to act.
 - (1). In general.
 - (2). Relationship.
 - (3). Attorney or agent for parties.
- 58. Jurisdiction to be shown by record.
 - (1). In general.
 - (2). Jurisdiction as dependent on place of bringing suit.
 - (3). Jurisdiction as dependent on amount in controversy.
 - (4). Process or appearance.
 - (5). Pleading jurisdictional facts.
- 59. Presumptions as to jurisdiction.

III. CIVIL JURISDICTION AND AUTHORITY.(Cont'd)

- 60. Waiver of objections.
- 61. Determination of questions of jurisdiction in general.
- 62. Acts and proceedings without jurisdiction.

IV. PROCEDURE IN CIVIL CASES.

- 63. Mode and form in general.
- 64. Constitutional and statutory provisions.
- 66. Conformity to practice in courts of record.
- 67. Forms of action.
- 68. Joinder of causes of action.
- 69. Consolidation of actions.
- 70. Commencement of action or other proceeding in general.
- 71. Place and time of taking proceedings or holding court.
- 72. Venue.
- 73. Change of venue and transfer of cause to other justice.
 - (1). In general.
 - (2). Grounds.
 - (3). Time for application.
 - (4). Application and procedure.
 - (5). Jurisdiction and proceedings after change.
 - (6). Second or subsequent change.
 - (7). Jurisdiction and proceedings after refusal of change.
 - (8). Transfer of cause on expiration of term of justice.
- 75. Removal of cause to court of record.
 - (1). In general.
 - (2). Jurisdiction and proceedings after removal.
 - (3). Pleading after removal.
- 76. Limitation of actions.
See also LIMITATION OF ACTIONS.
- 77. Parties.
- 78. Process.
- 78.1. — In general.
- 79. — Nature and necessity.
- 80. — Issuance.
- 80.1. — Form and requisites.
 - (1). In general.
 - (2). Statement as to nature, form and cause of action.

231. JUSTICES OF THE PEACE

IV. PROCEDURE IN CIVIL CASES.(Cont'd)

- (3). Direction of place and time for return or appearance.
- (4). Signature.
- 81. — Service.
 - (1). In general.
 - (2). Service on corporation.
 - (3). Authority or capacity to serve.
 - (4). Substituted service.
 - (5). Publication.
- 82. — Return and proof of service.
 - (1). In general.
 - (2). Form and requisites, effect, and evidence as to service.
- 83. — Defects and objections.
- 83.1. — Amendment.
- 84. Appearance by attorney.
 - (.5). In general.
 - (1). Proceedings constituting appearance and effect thereof in general.
 - (2). Waiver of defects or objections.
 - (3). Waiver of disqualification of justice.
 - (4). Waiver of objections to place of bringing suit.
 - (5). Waiver of process.
 - (6). Waiver of defects in process or service.
 - (7). Waiver of irregular adjournments.
- 84.1. Representation by attorney.
- 85. Arrest and bail.
- 86. Attachment.
 - (.5). In general.
 - (1). Nature and grounds.
 - (2). Property subject to attachment.
 - (2.5). Proceedings to procure in general.
 - (3). Affidavits for attachment.
 - (4). Security.
 - (5). Writ or warrant.
 - (6). Levy, lien, and custody and disposition of property.
 - (7). Proceedings to support or enforce.
 - (8). Quashing, vacating, and dissolution.
 - (9). Claims by third persons.
 - (10). Return.
 - (11). Liabilities on bonds.

IV. PROCEDURE IN CIVIL CASES.(Cont'd)

- (12). Wrongful attachment.
- 87. Garnishment.
 - (.5). In general.
 - (1). Nature and grounds, and persons and property subject to garnishment.
 - (2). Proceedings to procure.
 - (3). Writ or summons, notice, service, and return, and appearance.
 - (4). Proceedings to support or enforce.
 - (5). Claims by third persons.
 - (6). Dissolution and discharge.
 - (7). Operation and effect of garnishment, judgment, or payment.
 - (8). Liabilities on bonds and undertakings.
 - (9). Wrongful garnishment.
- 88. Payment to justice.
- 89. Pleading.
- 89.1. — In general.
- 90. — Mode and form in general.
- 91. — Declaration, complaint, petition, or statement of demand.
 - (.5). In general.
 - (1). Necessity, form, and requisites in general.
 - (2). Particular actions in general.
 - (3). Actions on accounts, notes, or instruments for payment of money.
 - (4). Actions for services rendered.
 - (5). Actions against carriers.
 - (6). Actions for torts.
 - (7). Actions for penalties.
 - (8). Actions for recovery of personal property.
- 92. — Plea, answer, or statement of defense in general.
- 93. — Set-off, counterclaim, and cross-complaint.
- 95. — Demurrer or exception.
- 96. — Amended and supplemental pleadings.
- 97. — Signature and verification.
- 98. — Filing written instrument.
- 99. — Bill of particulars and copy of account.
- 100. — Issues, proof, and variance.
 - (.5). In general.

231. JUSTICES OF THE PEACE

IV. PROCEDURE IN CIVIL CASES.(Cont'd)

- (1). Issues and proof.
- (2). Variance between allegations and proof.
- 101. — Defects and objections.
- 102. Stipulations.
- 103. Motions.
- 104. Evidence.
- 105. Witnesses, depositions, and affidavits.
- 106. Dismissal and nonsuit.
- 107. Continuance and adjournment.
 - (.5). In general.
 - (1). Power of court, and right to continuance.
 - (2). Procedure.
 - (3). Second or further continuance.
 - (4). Renewal of proceedings after adjournment.
 - (5). Objections.
- 108. Proceedings preliminary to trial.
- 109. Course and conduct of trial in general.
- 110. Reception of evidence.
- 111. Taking case or question from jury.
- 112. Instructions to jury.
- 113. Custody, conduct, and deliberations of jury.
- 114. Verdict and findings.
- 115. Trial by justice without jury, and reference.
- 116. New trial.
- 117. Appeal to jury.
- 118. Judgment.
- 119. — In general.
- 119.1. — Nature and essentials in general.
- 119.2. — Jurisdiction to sustain judgment.
- 119.3. — Process and appearance to sustain judgment.
- 120. — By confession.
- 121. — On consent, offer, or admission.
- 122. — By default.
 - (1). In general.
 - (2). Process, appearance, and pleading to sustain judgment.
 - (3). Default of appearance or in pleading and absence at trial.
 - (4). Taking default and relief awarded.
 - (5). Opening or setting aside default.
- 123. — On summary proceeding.
- 124. — On trial of issues.

IV. PROCEDURE IN CIVIL CASES.(Cont'd)

- (1). In general.
- (2). Form and requisites.
- (3). Parties.
- 125. — Rendition, entry, and record.
 - (.5). In general.
 - (1). Time for rendition.
 - (2). Entry of judgment.
 - (3). Time for entry.
 - (4). Record and docket of judgment.
 - (5). Signature.
- 126. — Amendment and correction.
- 127. — Opening or vacating.
- 128. — Actions to vacate or for equitable relief.
 - (.5). In general.
 - (1). Nature of remedy and grounds.
 - (2). Existence of other adequate remedy.
 - (3). Procedure.
- 129. — Collateral attack.
 - (1). In general.
 - (2). Grounds in general.
 - (3). Want of jurisdiction.
 - (4). Defects in process.
- 130. — Construction and operation.
- 131. — Lien.
- 132. — Assignment.
- 133. — Suspension, enforcement, revival, and satisfaction.
- 134. — Actions on judgments.
- 135. Execution.
 - (1). In general.
 - (1.5). Property subject to execution.
 - (2). Issuance, form, and requisites of writ.
 - (3). Lien and levy.
 - (4). Stay, quashing, vacating, and other relief against execution.
 - (5). Claims by third persons.
 - (6). Sale.
 - (7). Return.
 - (8). Payment, satisfaction, and discharge.
 - (9). Execution against person.
 - (10). Wrongful execution.
 - (11). Supplementary proceedings.
- 136. Objections and exceptions.

231. JUSTICES OF THE PEACE

IV. PROCEDURE IN CIVIL CASES.(Cont'd)

- 137. Waiver and correction of irregularities and errors.
- 138. Records and dockets.
 - (.5). In general.
 - (1). Matters to be entered and sufficiency of entries.
 - (2). Cause of action.
 - (3). Time and place of proceedings.
 - (4). Process.
 - (5). Pleadings and affidavits.
 - (6). Evidence.
 - (7). Adjournments.
 - (8). Witnesses and jurors.
 - (9). Inspection and transcripts.
 - (10). Operation and effect.
 - (11). Defects and objections.
 - (12). Amendment or alteration.

V. REVIEW OF PROCEEDINGS.

(A) APPEAL AND ERROR.

- 139. Nature and form of remedy.
- 140. Statutory provisions.
- 141. Appellate jurisdiction.
 - (1). In general.
 - (2). Jurisdiction dependent on jurisdiction of lower court in general.
 - (3). Actions involving title to real property.
 - (4). Amount in controversy.
 - (5). Waiver of objections and consent to jurisdiction.
 - (6). Determination of jurisdiction.
- 142. Decisions reviewable.
- 143. — In general.
- 144. — Nature of subject-matter.
- 145. — Amount or value in controversy.
 - (1). In general.
 - (2). Cases subject to pecuniary limitation.
 - (3). Requisite amount or value, and determination thereof.
 - (4). Reductions and remissions of amount.
- 146. — Finality of determination.
 - (.5). In general.
 - (1). Necessity, and nature of determination in general.

V. REVIEW OF PROCEEDINGS.(Cont'd)

- (2). Judgments of dismissal, nonsuit, and for costs.
- 147. — Nature, scope, and effect of decision.
 - (1). In general.
 - (2). Void judgments.
 - (3). Judgments by default.
 - (4). Judgments by confession.
 - (5). Judgment of dismissal or nonsuit.
 - (6). Rulings other than judgments.
 - (7). Attachment.
- 148. — Mode of rendition, form, and entry of judgment or order.
- 149. Right of review.
 - (1). In general.
 - (2). Waiver or loss of right to appeal.
- 150. Presentation and reservation before justice of grounds of review.
 - (1). In general.
 - (2). Acts without jurisdiction.
 - (3). Defects as to process and parties.
 - (4). Defects in pleadings.
 - (5). Errors and irregularities in proceedings.
 - (6). Motions for new trial and to set aside default.
- 152. Parties.
- 153. Requisites and proceedings for transfer of cause.
- 154. — In general.
- 155. — Time for taking proceedings.
 - (.5). In general.
 - (1). Limitations.
 - (2). Waiver of objections to delay.
 - (3). Effect of delay or failure to take proceedings.
 - (4). Relief in case of failure to proceed in time.
 - (5). Grounds for relief.
 - (6). Absence or fault of justice as ground for relief.
- 156. — Petition or prayer, and allowance.
- 157. — Certificate or affidavit.
 - (.5). In general.
 - (1). Necessity.
 - (2). Time for filing.
 - (3). Form and requisites.

231. JUSTICES OF THE PEACE

V. REVIEW OF PROCEEDINGS.(Cont'd)

- (4). Amendment of affidavit and supplying omitted affidavit.
- (5). Waiver of objections.
- (6). Service.
- 158. — Payment of fees or costs.
 - (.5). In general.
 - (1). Necessity of payment and effect of failure to pay.
 - (3). Time for payment.
 - (4). Costs and fees included, and payment or tender thereof.
- 159. — Bonds or other securities.
 - (.5). In general.
 - (1). Necessity.
 - (2). Parties required to give security and appeals in forma pauperis.
 - (3). Obligors.
 - (4). Obligees.
 - (5). Sureties.
 - (6). Justification of sureties.
 - (7). Amount of bond or security.
 - (8). Conditions of bond or undertaking.
 - (9). Form and requisites of bond or undertaking.
 - (10). Execution, approval, filing, and service of bond or undertaking.
 - (11). Nature of security required.
 - (12). Amendment or new security.
 - (13). Waiver of defects in bond or delay in filing.
- 160. — Process or notice of appeal.
 - (.5). In general.
 - (1). Necessity of process or notice.
 - (2). Authority to give notice.
 - (3). Form and requisites.
 - (4). Filing and service.
 - (5). Effect of failure to give notice.
 - (6). Defects and amendment.
 - (7). Waiver of want of notice and defects.
- 161. — Entry and docketing.
- 161.1. — Appearance.
 - (1). In general.
 - (2). As waiver.
 - (3). — In general.
 - (4). — Objections to appellate jurisdiction.

V. REVIEW OF PROCEEDINGS.(Cont'd)

- (5). — Defects in proceedings for appeal.
- 162. Effect of transfer of cause or proceedings therefor.
 - (.5). In general.
 - (1). Powers and proceedings of lower court.
 - (2). Jurisdiction acquired by appellate court.
- 163. Supersedeas or stay of proceedings.
- 164. Return, statement, record, or transcript.
 - (.5). In general.
 - (1). Matters to be shown by record or transcript.
 - (2). Necessity, scope, contents, and requisites of transcript and bill of exceptions.
 - (3). Transmission or filing.
 - (4). Defects, objections, amendment, and correction.
 - (5). Compelling amendment or transmission of record.
 - (6). Conclusiveness or effect, and questions presented for review.
- 165. Assignment of errors and briefs.
- 166. Dismissal, withdrawal, or abandonment.
 - (.5). In general.
 - (1). Voluntary dismissal of appeal.
 - (2). Grounds for dismissal.
 - (3). Proceedings for dismissal.
 - (4). Judgment on dismissal.
 - (5). Effect of dismissal.
 - (6). Reinstatement.
- 167. Proceedings preliminary to hearing.
 - (1). In general.
 - (2). Change of venue.
 - (3). Dismissal of action or nonsuit.
 - (4). Continuance.
- 168. Offer of judgment.
- 169. Hearing in general.
- 170. Trial of cause anew.
- 170.1. — In general.
- 171. — Cases triable in appellate court.
 - (1). In general.
 - (2). Amount and nature of cause of action.
 - (3). Nature and validity of judgment.
- 172. — Proceedings for trial de novo in general.

231. JUSTICES OF THE PEACE

V. REVIEW OF PROCEEDINGS.(Cont'd)

- 173. — Scope of inquiry.
 - (.5). In general.
 - (1). Issues as tried below.
 - (2). Errors, irregularities, or defects.
 - (3). Jurisdiction of justice.
- 174. — Proceedings relating to parties, process, and pleading.
 - (.5). In general.
 - (1). Amendments relating to parties.
 - (2). Amendment of process of lower court.
 - (2.5). Pleadings in general.
 - (3). Further pleadings or new pleadings in general.
 - (4). Necessity of new pleadings.
 - (5). New or amended pleadings as a matter of right.
 - (6). Power and discretion of court to allow new or amended pleadings.
 - (7). Supplying lost pleadings.
 - (8). Pleading new cause of action.
 - (9). Dismissal of part of cause of action.
 - (10). Increasing amount demanded.
 - (11). Pleading matter not within jurisdiction of justice.
 - (12). Increasing demand beyond jurisdiction of justice.
 - (13). Pleading new defenses.
 - (14). Pleas in abatement.
 - (15). Pleading set-offs and counter-claims.
 - (16). Changing form of action.
 - (17). Making pleading more definite and certain.
 - (18). Amendments as to jurisdictional facts.
 - (19). Amendments to conform to case or proof.
 - (20). Proceedings for allowance of amendments.
 - (21). Time of pleading anew.
 - (22). Sufficiency of pleadings.
 - (23). Departure from pleadings in lower court.
 - (24). Demurrers on appeal.
 - (25). Waiver of pleas or objections to pleading.

V. REVIEW OF PROCEEDINGS.(Cont'd)

- (26). Issues, proof, and variance.
- 175. — Evidence.
- 176. — Mode and conduct of trial.
 - (1). In general.
 - (2). Right to open and close.
- 177. — Questions for jury.
- 178. — Instructions.
- 179. — Verdict and findings.
- 180. — Trial by court.
- 181. — Attachment and garnishment.
- 182. Review.
 - 182.1. — In general.
- 183. — Scope and extent.
 - (.5). In general.
 - (1). Presumptions.
 - (2). Harmless error.
 - (3). Parties entitled to allege error.
 - (4). Discretion of court.
- 184. — On appeal on questions of law.
- 185. — On appeal on questions of fact.
 - (1). In general.
 - (2). Findings on conflicting evidence.
 - (3). Weight and sufficiency of evidence.
 - (4). Verdicts.
- 186. Determination and disposition of cause.
- 187. — In general.
- 188. — Judgment on trial de novo.
 - (1). In general.
 - (2). On default or nonsuit.
 - (3). Amount of judgment.
 - (4). Setting aside judgment.
- 189. — Affirmance.
 - 189.1. — Modification.
 - 189.2. — Reversal.
 - (1). In general.
 - (2). Proceedings on reversal.
 - (3). Vacating or setting aside judgment of appellate court.
- 190. — Remand and proceedings before justice.
- 191. Liabilities on bonds and other securities.
 - (.5). In general.
 - (1). Nature and validity of bond.
 - (2). Release or discharge of surety.
 - (3). Accrual and extent of liability.
 - (4). Judgment against sureties on appeal.
 - (5). Actions.

231. JUSTICES OF THE PEACE

V. REVIEW OF PROCEEDINGS.(Cont'd)

(B) CERTIORARI.

- 192. Nature and scope of remedy in general.
- 193. Statutory provisions.
- 194. Existence of or resort to other remedy.
 - (.5). In general.
 - (1). Existence of remedy by appeal.
 - (2). Loss of right to other remedy.
- 195. Jurisdiction.
- 196. Decisions and proceedings reviewable.
 - (.5). In general.
 - (1). Nature of proceedings or subject-matter.
 - (2). Nature of decisions.
 - (3). Issues of law or fact.
 - (4). Amount or value in controversy.
- 197. Grounds.
 - (1). In general.
 - (2). Acts without jurisdiction.
 - (3). Errors and irregularities.
- 198. Defenses and grounds of opposition.
- 199. Right of review.
- 200. Presentation before justice of objections.
- 201. Parties.
- 202. Proceedings to procure writ.
 - (.5). In general.
 - (1). Time for taking proceedings.
 - (2). Affidavit or petition.
 - (3). Payment of costs, and recognizances or bonds.
- 203. Issuance and service of writ or notice thereof.
- 204. Supersedeas or stay of proceedings.
- 205. Return and record.
 - (1). In general.
 - (2). Scope and contents.
 - (3). Sufficiency.
 - (4). Exceptions or traverse.
 - (5). Amendment or further return.
 - (6). Conclusiveness of return or record.
 - (7). Questions presented for review.
- 206. Proceedings preliminary to hearing.
 - (.5). In general.
 - (1). Quashing or dismissal of writ.
 - (2). Assignment of errors, and amendment of process or pleading.
- 207. Hearing.

V. REVIEW OF PROCEEDINGS.(Cont'd)

- 208. Review.
 - (.5). In general.
 - (1). Scope and extent in general.
 - (2). Mode of review and trial de novo.
 - (3). Presumptions.
 - (4). Harmless error.
 - (5). Evidence and questions of fact.
- 209. Determination and disposition of cause.
 - (1). In general.
 - (2). Affirmance.
 - (3). Modification.
 - (4). Reversal.
 - (5). New or final judgment.
 - (6). Restitution.
 - (7). Remand and new trial.
 - (8). Costs.
- 210. Liabilities on bonds.

231E. KIDNAPPING

SUBJECTS INCLUDED

Taking, carrying away, or removing a person, often a child, by force or fraud, for the purpose of secretly confining or concealing such person or removing him to another location

Attempts to commit such offenses, and aiding therein

Criminal custodial interference

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Abduction of female for purpose of marriage, defilement, etc., see CRIMINAL LAW
⌘45.10

Civil consequences or liability for custodial interference, see CHILD CUSTODY

False imprisonment, or mere detention or restraint absent asportation, see FALSE IMPRISONMENT

Luring or enticing a child, see also INFANTS

231H. LABOR AND EMPLOYMENT

10. In general.
11. Statutory and constitutional provisions.
12. — In general.
13. — Validity.
14. Elements.
15. — In general.
16. — Intent.
17. — Asportation; movement of victim.
18. — Confinement, restraint, or detention.
19. — Motive; ransom.
20. — Want of consent.
Include consent raised as a defense.
21. Injury to victim.
22. Other crimes distinguished.
See also CRIMINAL LAW §29(13).
23. Criminal custodial interference.
24. — In general.
25. — Intent.
26. — Consent or wishes of child.
27. Degrees.
28. Attempt.
29. Defenses.
Exclude consent as a defense.
30. Interstate issues.
31. Persons liable.
32. Indictment and information.
33. Evidence.
34. — In general.
35. — Presumptions and burden of proof.
36. — Weight and sufficiency.
37. Trial.
38. — In general.
39. — Instructions.
40. — Questions of law or fact.
41. Sentence and punishment.
See also SENTENCING AND PUNISHMENT.

231H. LABOR AND EMPLOYMENT

SUBJECTS INCLUDED

The relation created by contracts of employment, express or implied

Rights, powers, duties, and liabilities of employer and employee as between themselves and as to others, incident to the relation

Compensation and benefits owed to private employees

Retaliation or adverse employment action by employer for protected activities by employees, including "whistleblowing," filing of workers' compensation claims, etc.

Pension and benefit plans sponsored by private employers, labor organizations, or both, to provide for retirement and welfare of employees, including—

Who are entitled to such allowances and rate and amount thereof

Proceedings to obtain and payment of such benefits

Duties and liabilities of plan administrators

Interference of others with the employment relation

Legal proceedings relating to the employment relation

Apprenticeship, and incidents thereof

Employment agencies

Occupational health and safety and regulation thereof

Liability of employer, other than for workers' compensation, for injuries to employee, and actions relating thereto

Relations between labor and management and the regulation and control of labor matters generally

Labor organizations

Collective bargaining

Labor contracts

Labor disputes and concerted activities

Unfair labor practices

Mediation, conciliation and arbitration of labor disputes

Labor relations boards and proceedings

Labor organization funds such as strike funds

Civil liabilities arising out of labor relations

Injunctions involving labor relations

Offenses and penalties

Regulation of wages and hours

Family and medical leave rights

Agricultural and migrant labor

231H. LABOR AND EMPLOYMENT

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Agency in general, see PRINCIPAL AND AGENT, CORPORATIONS AND BUSINESS ORGANIZATIONS

Antitrust laws, application of, see ANTI-TRUST AND TRADE REGULATION

Child labor, see also INFANTS

Contracts for specific work not involving a hiring of services generally, see CONTRACTS

Corporate officers and agents, see CORPORATIONS AND BUSINESS ORGANIZATIONS

Discrimination in employment, see CIVIL RIGHTS

Exemption of pensions from—

Attachment and execution, see EXEMPTIONS

Taxation, see TAXATION

Federal old age, survivors, and disability benefits, see SOCIAL SECURITY

Implied liabilities for services rendered, not in performance of contract obligations or of the duties of any employment or other special relation, see IMPLIED AND CONSTRUCTIVE CONTRACTS, ASSUMPSIT, ACTION OF

Indian tribes, non-Indian employees of, see INDIANS ¶224

Insurance, construction of policies, see INSURANCE

Public employees, matters involving other than labor relations and wages and hours regulation, see PUBLIC EMPLOYMENT, and other particular topics

Retaliation by employer for exercise of civil rights or rights under employment discrimination statutes, see CIVIL RIGHTS

Retired officers, civil or military, pay of, see PUBLIC EMPLOYMENT, JUDGES, ARMED SERVICES and topics relating to other officers

Seamen, injuries to, see SEAMEN

Stevedores or other longshoremen, injuries to, see SHIPPING

Unemployment compensation, see UNEMPLOYMENT COMPENSATION

Workers' compensation, see WORKERS' COMPENSATION

I. IN GENERAL, ¶1-59.

II. GOVERNMENT REGULATION IN GENERAL, ¶60-69.

III. RIGHTS AND DUTIES OF EMPLOYERS AND EMPLOYEES IN GENERAL, ¶70-159.

IV. COMPENSATION AND BENEFITS, ¶160-299.

(A) IN GENERAL, ¶160-236.

(B) ACTIONS, ¶237-279.

(C) RAILROAD EMPLOYEES RETIREMENT BENEFITS, ¶280-299.

V. INTELLECTUAL PROPERTY RIGHTS AND DUTIES, ¶300-329.

VI. TIME OFF; LEAVE, ¶330-399.

VII. PENSION AND BENEFIT PLANS, ¶400-749.

(A) IN GENERAL, ¶400-410.

(B) PLANS IN GENERAL, ¶411-458.

(C) FIDUCIARIES AND TRUSTEES, ¶459-499.

(D) CONTRIBUTIONS AND FUNDING, ¶500-519.

(E) INSOLVENT OR UNDERFUNDED PLANS, ¶520-527.

(F) SPECIAL STATUTORY PROVISIONS, ¶528-530.

(G) ELIGIBILITY, PARTICIPATION, AND COVERAGE, ¶531-555.

(H) COVERAGE AND BENEFITS OF PARTICULAR TYPES OF PLANS, ¶556-576.

(I) PERSONS ENTITLED TO BENEFITS, ¶577-609.

(J) DETERMINATION OF BENEFIT CLAIMS BY PLAN, ¶610-629.

(K) ACTIONS, ¶630-749.

1. IN GENERAL, ¶630-639.

2. ACTIONS FOR REGULATORY SUPERVISION, ¶640-642.

3. ACTIONS TO ENFORCE STATUTORY OR FIDUCIARY DUTIES, ¶643-664.

4. ACTIONS TO ENFORCE CONTRIBUTIONS, ¶665-675.

5. ACTIONS TO RECOVER BENEFITS, ¶676-704.

6. ACTIONS AGAINST PARTICIPANTS OR BENEFICIARIES OR OTHER RECIPIENTS, ¶705-707.

7. COSTS AND ATTORNEY FEES, ¶708-749.

VIII. ADVERSE EMPLOYMENT ACTION, ¶750-899.

(A) IN GENERAL, ¶750-849.

(B) ACTIONS, ¶850-899.

231H. LABOR AND EMPLOYMENT

IX. INTERFERENCE WITH THE EMPLOYMENT RELATIONSHIP,
⌘900-924.

X. APPRENTICES, ⌘925-934.

XI. EMPLOYMENT AGENCIES,
⌘935-959.

XII. LABOR RELATIONS, ⌘960-2169.

- (A) IN GENERAL, ⌘960-986.
- (B) LABOR ORGANIZATIONS,
⌘987-1099.
- (C) COLLECTIVE BARGAINING,
⌘1100-1149.
- (D) BARGAINING REPRESENTATIVES, ⌘1150-1234.
- (E) LABOR CONTRACTS, ⌘1235-1339.
- (F) DISPUTES AND CONCERTED ACTIVITIES, ⌘1340-1426.
 - 1. IN GENERAL, ⌘1340-1352.
 - 2. NATURE OF DISPUTE AND PURPOSE OF ACTIVITY,
⌘1353-1369.
 - 3. NATURE OF ACTIVITY,
⌘1370-1399.
 - 4. PERSONS CONCERNED,
⌘1400-1402.
 - 5. SECONDARY PRESSURES,
⌘1403-1415.
 - 6. PUBLIC EMPLOYEES,
⌘1416-1426.
- (G) UNFAIR LABOR PRACTICES,
⌘1427-1505.
- (H) ALTERNATIVE DISPUTE RESOLUTION, ⌘1506-1649.
 - 1. IN GENERAL, ⌘1506-1516.
 - 2. MATTERS SUBJECT TO ARBITRATION, ⌘1517-1540.
 - 3. ARBITRATION AGREEMENTS,
⌘1541-1556.
 - 4. PROCEEDINGS, ⌘1557-1600.
 - 5. ADMINISTRATIVE REVIEW,
⌘1600.1-1600.16.
 - 6. JUDICIAL REVIEW AND ENFORCEMENT, ⌘1601-1649.
- (I) LABOR RELATIONS BOARDS AND PROCEEDINGS, ⌘1650-1840.
 - 1. IN GENERAL, ⌘1650-1699.
 - 2. PARTIES, ⌘1700-1702.
 - 3. NOTICE AND APPEARANCE,
⌘1703.
 - 4. PLEADING, ⌘1704-1710.
 - 5. EVIDENCE IN GENERAL,
⌘1711-1723.
 - 6. WEIGHT AND SUFFICIENCY OF EVIDENCE, ⌘1724-1785.
 - 7. WITNESSES, ⌘1786-1789.
 - 8. ABANDONMENT OR DISMISSAL OF PROCEEDINGS,
⌘1790-1791.

XII. LABOR RELATIONS—Cont'd

(I) LABOR RELATIONS BOARDS AND PROCEEDINGS—Cont'd

- 9. HEARING, ⌘1792-1810.
 - 10. ORDERS, ⌘1811-1833.
 - 11. CONCLUSIVENESS OF DETERMINATION OR ORDER,
⌘1834-1840.
 - (J) JUDICIAL REVIEW AND ENFORCEMENT OF DECISIONS OF LABOR RELATIONS BOARDS,
⌘1841-1959.
 - 1. REVIEW BY COURTS,
⌘1841-1899.
 - 2. ENFORCEMENT BY COURTS,
⌘1900-1959.
 - (K) CIVIL LIABILITIES, ⌘1960-2009.
 - (L) INJUNCTION, ⌘2010-2169.
 - 1. IN GENERAL, ⌘2010-2036.
 - 2. DISPUTES AND CONCERTED ACTIVITIES, ⌘2037-2070.
 - 3. PERSONS CONCERNED,
⌘2071-2082.
 - 4. PUBLIC EMPLOYMENT, ⌘2083.
 - 5. WRONGFUL INJUNCTION,
⌘2084.
 - 6. PROCEEDINGS, ⌘2085-2119.
 - 7. PRELIMINARY AND INTERLOCUTORY INJUNCTIONS IN GENERAL, ⌘2120-2128.
 - 8. PERMANENT INJUNCTION IN GENERAL, ⌘2129-2136.
 - 9. VIOLATION AND ENFORCEMENT; CONTEMPT,
⌘2137-2162.
 - 10. REVIEW, ⌘2163.
 - 11. COSTS AND ATTORNEY FEES,
⌘2164-2169.
- XIII. WAGES AND HOURS, ⌘2170-2550.
- (A) IN GENERAL, ⌘2170-2209.
 - (B) MINIMUM WAGES AND OVERTIME PAY, ⌘2210-2449.
 - 1. IN GENERAL, ⌘2210-2223.
 - 2. PERSONS AND EMPLOYMENTS WITHIN REGULATIONS,
⌘2224-2249.
 - 3. EXEMPTIONS, ⌘2250-2294.
 - 4. OPERATION AND EFFECT OF REGULATIONS, ⌘2295-2335.
 - 5. ADMINISTRATIVE POWERS AND PROCEEDINGS, ⌘2336-2360.
 - 6. ACTIONS, ⌘2361-2412.
 - 7. INJUNCTIONS, ⌘2413-2449.
 - (C) EQUAL PAY, ⌘2450-2489.
 - (D) HOURS OF SERVICE, ⌘2490-2520.
 - (E) OFFENSES AND PROSECUTIONS,
⌘2521-2550.

231H. LABOR AND EMPLOYMENT

XIV. SAFETY AND HEALTH REGULATION IN GENERAL, ¶2551-2619.

XV. MINES, ¶2620-2699.

(A) IN GENERAL, ¶2620-2679.

(B) PNEUMOCONIOSIS; BLACK LUNG BENEFITS, ¶2680-2699.

XVI. AGRICULTURAL LABOR, ¶2700-2749.

XVII. EMPLOYER'S LIABILITY TO EMPLOYEES, ¶2750-3019.

(A) IN GENERAL, ¶2750-2830.

1. NATURE AND SCOPE OF EMPLOYER'S DUTY, ¶2750-2799.

2. ACTIONS IN GENERAL, ¶2800-2830.

(B) WORKING CONDITIONS AND METHODS OF PERFORMING WORK, ¶2831-2899.

(C) WARNINGS REGARDING WORK PERFORMED, ¶2900-2920.

(D) FELLOW EMPLOYEES, ¶2921-2943.

(E) RISKS ASSUMED BY EMPLOYEE, ¶2944-2976.

(F) CONTRIBUTORY NEGLIGENCE; DIMINUTION OF DAMAGES, ¶2977-3019.

XVIII. RIGHTS AND LIABILITIES AS TO THIRD PARTIES, ¶3020-3200.

(A) IN GENERAL, ¶3020-3024.

(B) ACTS OF EMPLOYEE, ¶3025-3124.

1. IN GENERAL, ¶3025-3077.

2. ACTIONS, ¶3078-3124.

(C) WORK OF INDEPENDENT CONTRACTOR, ¶3125-3200.

XIX. NOTICE OF TERMINATION; RETRAINING, ¶3201-3259.

(A) IN GENERAL, ¶3201-3229.

(B) ACTIONS, ¶3230-3259.

XX. OFFENSES AND PENALTIES, ¶3260-3285.

(A) IN GENERAL, ¶3260-3279.

(B) PROSECUTIONS, ¶3280-3285.

I. IN GENERAL.

1. In general.
2. Constitutional and statutory provisions.
3. — In general.
4. — Purpose and construction in general.
5. — Validity.
6. — Retroactive operation.
7. What law governs.
8. Preemption.
See also STATES I(B).
9. Pre-employment issues.

I. IN GENERAL.(Cont'd)

10. — In general.
11. — Moving expenses.
12. — Want-ads.
13. — Applications.
14. — Credit history.
15. — Honesty testing.
16. — Polygraphs.
17. — Drug testing.
18. — Physical examinations; genetic testing.
19. — Psychological and similar testing.
20. — Intelligence testing.
21. — Other particular issues.
22. Nature, creation, and existence of employment relation.
23. — In general.
24. — Particular cases in general.
25. — Who is employer; multiple entities.
26. — Borrowed servant doctrine in general.
Rights and liabilities as to third parties, see XVIII.
27. — Supervisor or other person as employer.
28. Independent contractors and their employees.
Liability for acts or conduct, see ¶3125-3183.
29. — In general.
30. — Particular cases.
31. Contracts.
32. — In general.
33. — Right to enter into relation or not; freedom of contract.
34. — Formation; requisites and validity.
 - (1). In general.
 - (2). Particular cases.
35. — Construction and operation in general.
See also ¶108.
36. — Implied contracts.
37. Term, duration, and termination.
Wrongful discharge and retaliation claims, public policy and statutory restrictions on termination, and termination considered as breach of contract or as violation of implied covenant of good faith and fair dealing, see VIII.
38. — In general.
39. — Commencement of relation.
40. — Definite or indefinite term; employment at-will.
 - (1). In general.

231H. LABOR AND EMPLOYMENT

I. IN GENERAL.(Cont'd)

- (2). Termination; cause or reason in general.

Particular causes or reasons, see VIII.

- (3). Particular cases.

41. — Hiring for a period of time.

- (1). In general.

- (2). By the year.

- (3). By the month.

- (4). Other particular time periods.

42. — Lifetime or permanent employment.

43. — Other particular terms.

44. — Termination by mutual agreement.

45. — Termination by employee.

- (1). In general.

- (2). Abandonment; constructive resignation.

Constructive discharge, see §369, 826.

46. — Changed circumstances.

47. Modification or rescission of contract.

48. Renewal or continuation.

49. Manuals, handbooks, and policy statements.

50. — In general.

51. — Particular cases.

52. Actions or proceedings in general.

53. Evidence of employment.

54. — In general.

55. — Presumptions and burden of proof.

Presumption of at-will employment, see §40.

56. — Admissibility.

57. — Weight and sufficiency.

58. Questions of law and fact as to employment status.

II. GOVERNMENT REGULATION IN GENERAL.

60. In general.

61. Constitutional and statutory provisions.

62. Administrative boards and officers and agents in general.

63. Regulations in general.

64. Enforcement procedures.

65. Evidence.

66. Review.

67. Searches and inspections.

III. RIGHTS AND DUTIES OF EMPLOYERS AND EMPLOYEES IN GENERAL.

70. In general.

71. Constitutional and statutory provisions.

III. RIGHTS AND DUTIES OF EMPLOYERS AND EMPLOYEES IN GENERAL.(Cont'd)

72. — In general.

73. — Purpose.

74. — Validity.

75. — Retroactive application.

76. What law governs.

77. Preemption.

See also STATES I(B).

78. Fiduciary relation in general.

79. Good faith and fair dealing.

Adverse actions, see §841.

80. Direction and control by employer in general.

81. Rules, regulations, orders, and standards.

82. — In general.

83. — Grooming; dress codes.

84. — Behavior.

85. — Manner of conducting business.

86. — Polygraph testing.

87. Privacy in general.

88. Records and confidentiality in general.

89. Physical examinations; privacy.

90. Psychological examinations; privacy.

91. Intelligence testing.

92. Searches.

93. — In general.

94. — Personal effects; desks, offices, cubicles.

95. — Body frisks or searches.

96. — Computers; electronic data storage.

97. Drug testing.

98. Freedom of speech.

99. Freedom from abuse.

100. Blacklisting.

101. Seniority rights in general.

See XII for seniority under collective bargaining.

102. Coercion.

103. Political activities.

See also §811.

104. Duties of employers in general.

105. Duty of employer to provide work.

106. Duty of employer to post required notices, in general.

107. Employer organizations.

108. Construction of employment contract in general.

See also §35.

109. Employee's duties.

110. — In general.

231H. LABOR AND EMPLOYMENT

III. RIGHTS AND DUTIES OF EMPLOYERS AND EMPLOYEES IN GENERAL.(Cont'd)

- 111. — Fiduciary duty.
- 112. — Adequacy or extent of performance.
- 113. — Skill and care required.
- 114. — Conflict of interest.
 - (1). In general.
 - (2). Self-serving conduct.
 - (3). Other employers or similar parties.
- 115. — Tender of service.
- 116. — Substantial performance.
- 117. — Substitution of others.
- 118. — Excuses for non-performance.
- 119. Rights of employer as to torts by employee in general.
- 120. Post-employment duties.
- 121. — In general.
- 122. — Duty not to solicit customers.
- 123. — Duty not to compete in general.
Covenants not to compete, see CONTRACTS.
- 124. Injuries to employee by third parties.
- 125. — In general.
- 126. — Rights of employee.
- 127. — Rights of employer.
- 128. Actions by employee against employer.
See XVII for tort liability.
- 129. — In general.
- 130. — Right of action.
- 131. — Nature and form of remedy.
- 132. — Conditions precedent.
- 133. — Defenses.
- 134. — Jurisdiction and venue.
- 135. — Time to sue and limitations.
 - (1). In general.
 - (2). Limitations applicable in general.
- 136. — Parties in general; standing.
- 137. — Pleading.
- 138. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 139. — Damages and amount of recovery.
 - (1). In general.
 - (2). Computation.
 - (3). Amount.
 - (4). Punitive or exemplary damages.

III. RIGHTS AND DUTIES OF EMPLOYERS AND EMPLOYEES IN GENERAL.(Cont'd)

- (5). Interest.
 - (6). Evidence.
- 140. — Trial.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Instructions.
 - (4). Verdict and findings.
- 141. — Judgment.
- 142. — Costs and attorney fees.
- 143. Actions by employer against employee.
- 144. — In general.
- 145. — Right of action.
- 146. — Nature and form of remedy.
- 147. — Conditions precedent.
- 148. — Defenses.
- 149. — Jurisdiction and venue.
- 150. — Time to sue and limitations.
 - (1). In general.
 - (2). Limitations applicable in general.
- 151. — Parties in general; standing.
- 152. — Pleading.
- 153. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 154. — Damages and amount of recovery.
 - (1). In general.
 - (2). Computation.
 - (3). Amount.
 - (4). Punitive or exemplary damages.
 - (5). Interest.
 - (6). Evidence.
- 155. — Trial.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Instructions.
 - (4). Verdict and findings.
- 156. — Judgment.
- 157. — Costs and attorney fees.

IV. COMPENSATION AND BENEFITS.

(A) IN GENERAL.

- 160. In general.
- 161. Constitutional and statutory provisions.
- 162. — In general.

231H. LABOR AND EMPLOYMENT

IV. COMPENSATION AND BENEFITS.(Cont'd)

- 163. — Purpose.
- 164. — Validity.
- 165. — Retroactive application.
- 166. What law governs.
- 167. Preemption.
See also STATES I(B).
- 168. Wages and salary.
- 169. — In general.
- 170. — Duty to pay in general.
- 171. — Employment status; termination.
- 172. Commissions.
- 173. — In general.
- 174. — Effect of termination of employment.
- 175. Bonus.
- 176. Stock options.
- 177. Deferred compensation.
- 178. Profits or products of business.
- 179. Fringe benefits in general.
- 180. Vacation or personal holiday pay.
- 181. Holiday pay.
- 182. Sick leave.
See also VI.
- 183. "Comp time".
- 184. Insurance.
- 185. — In general.
- 186. — Medical.
- 187. — Dental.
- 188. — Life.
- 189. — Disability.
- 190. — Liability.
- 191. Employee referral program.
- 192. Employee suggestion.
- 193. Employee incentive program.
- 194. Reimbursements and advances in general.
- 195. Defending claims against employee; indemnity.
- 196. Relocation.
- 197. Travel.
- 198. Additional compensation in general.
- 199. Food.
- 200. Clothing.
- 201. Lodging.
- 202. Education.
- 203. Amount of compensation.
- 204. — In general.

IV. COMPENSATION AND BENEFITS.(Cont'd)

- 205. — Where not fixed by contract in general.
- 206. — Where fixed by contract in general.
- 207. — Determination of amount of compensation in general.
- 208. Raises.
- 209. Deductions, fines, and forfeitures.
- 210. — In general.
- 211. — Negligence or misconduct.
- 212. — Waiver by employer of right to deductions or forfeitures.
- 213. Part performance.
- 214. Waiver by, or estoppel of, employee.
- 215. Where fixed for part of service only.
- 216. Renewal or continuance of employment.
- 217. Severance pay.
- 218. Retirement benefits.
Post-ERISA, see VII.
- 219. — In general.
- 220. — What is a pension.
- 221. Payment.
- 222. — In general.
- 223. — Time when due.
- 224. — Persons liable.
- 225. — Persons entitled.
- 226. — Mode of payment.
- 227. Gratuities as part of payment.
- 228. Recovery of payment.
- 229. Interest.
- 230. Independent contractors.
- 231. Liens, priorities, and preferences.
- 232. — In general.
- 233. — Persons entitled.
- 234. — Priority.
- 235. — Assignment, waiver and forfeiture.
- 236. — Enforcement.

(B) ACTIONS.

- 237. In general.
- 238. Right of action.
- 239. Nature and form of remedy.
- 240. Conditions precedent.
- 241. Defenses.
- 242. Jurisdiction and venue.
- 243. Time to sue and limitations.
- 244. — In general.
- 245. — Limitations applicable in general.
- 246. Parties in general; standing.

231H. LABOR AND EMPLOYMENT

IV. COMPENSATION AND BENEFITS.(Cont'd)

- 247. Pleading.
- 248. — In general.
- 249. — Complaint, petition, or declaration.
- 250. — Plea or answer.
- 251. — Issues, proof, and variance.
- 252. Evidence.
- 253. — In general.
- 254. — Presumptions and burden of proof.
- 255. — Admissibility.
- 256. — Weight and sufficiency.
 - (1). In general.
 - (2). Wages and salary in general.
 - (3). Existence and terms of contract to pay wage or salary.
 - (4). Payment of wage or salary.
 - (5). Commissions.
 - (6). Effect of termination of employment.
 - (7). Bonuses.
 - (8). Stock options.
 - (9). Profits.
 - (10). Deferred compensation.
 - (11). Vacation or holiday pay.
 - (12). Sick leave.
 - (13). Insurance.
 - (14). Severance pay.
 - (15). Reimbursement of expenses and advances.
 - (16). Miscellaneous additional compensation.
 - (17). Defenses.
- 257. Damages and amount of recovery.
- 258. — In general.
- 259. — Computation and amount.
- 260. — Punitive or exemplary damages.
- 261. — Interest.
- 262. — Evidence.
- 263. Trial.
- 264. — In general.
- 265. — Questions of law or fact.
- 266. — Instructions.
- 267. — Verdict and findings.
- 268. Judgment.
- 269. Costs and attorney fees.
- 270. — In general.
- 271. — Attorney fees in general.
- 272. — Nature and grounds of allowances.
- 273. — Defenses.

IV. COMPENSATION AND BENEFITS.(Cont'd)

- 274. — Amount.
- 275. — Proceedings.

(C) RAILROAD EMPLOYEES RETIREMENT BENEFITS.

- 280. In general.
- 281. Statutory provisions.
- 282. Right to benefits; eligibility and disqualification.
- 283. — In general.
- 284. — Disability.
- 285. Proceedings.
- 286. — In general.
- 287. — Evidence.
- 288. Review.
- 289. — In general.
- 290. — Questions of law and fact.
- 291. Recovery or recoupment of payments.

V. INTELLECTUAL PROPERTY RIGHTS AND DUTIES.

- 300. In general.
- 301. Constitutional and statutory provisions.
- 302. What law governs.
- 303. Preemption.
See also STATES I(B).
- 304. Trade secrets or confidential information.
See also TORTS.
- 305. — In general.
- 306. — What are trade secrets or confidential information of employer.
- 307. — Particular trade secrets or information protected.
 - (1). In general.
 - (2). Technical processes, formulas, etc.
 - (3). Customer information.
- 308. Inventions, discoveries, or creations of employees.
- 309. — In general.
- 310. — Contracts.
- 311. — Matters before or after term of employment.
- 312. — License or shop right of employer.
- 313. Actions.
- 314. — In general.
- 315. — Right of action and defenses.
- 316. — Nature and form of remedy.
- 317. — Conditions precedent.

231H. LABOR AND EMPLOYMENT

V. INTELLECTUAL PROPERTY RIGHTS AND DUTIES.(Cont'd)

- 318. — Defenses.
- 319. — Jurisdiction and venue.
- 320. — Time to sue and limitations.
- 321. — Parties in general; standing.
- 322. — Pleading.
- 323. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 324. — Damages and amount of recovery.
- 325. — Trial.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Instructions.
 - (4). Verdict and findings.
- 326. — Judgment.
- 327. — Costs and attorney fees.

VI. TIME OFF; LEAVE.

Vacations, holidays, and other forms of paid leave, see IV. Discrimination based on pregnancy or maternity, see CIVIL RIGHTS §1176. Discrimination based on marital, parental, or familial status, see CIVIL RIGHTS §1195. Disability discrimination, see CIVIL RIGHTS §1215.

- 330. In general.
- 331. Constitutional provisions, statutes, and ordinances.
- 332. — In general.
- 333. — Purpose and construction in general.
- 334. — Power to enact and validity.
- 335. — Retroactive operation.
- 336. Federal preemption.
See also STATES I(B).
- 337. Eligible employees.
See also §384.
- 338. — In general.
- 339. — Existence of employment relationship.
- 340. — Length of service; minimum hours.
- 341. — Prospective and former employees.
- 342. — Notice of ineligibility.
- 343. Employers affected.
See also §385.
- 344. — In general.
- 345. — Number of employees.

VI. TIME OFF; LEAVE.(Cont'd)

- 346. — Multiple entities.
- 347. — Individuals as “employers”.
- 348. Grounds for leave.
- 349. — In general.
- 350. — Birth or adoption of child.
- 351. — Disability, illness, or health condition.
 - (1). In general.
 - (2). Severity in general.
 - (3). Particular conditions of employees.
 - (4). Family members and other non-employees.
- 352. — Other particular grounds.
- 353. Terms and conditions of leave.
- 354. — In general.
- 355. — Request for leave; notice to employer; foreseeability.
- 356. — Commencement, duration, and termination of leave.
- 357. — Intermittent, reduced, or partial leave.
- 358. — Employee’s obligations during leave; communication.
- 359. — Medical certifications.
- 360. — Other particular terms and conditions.
- 361. Rights of employee; violations.
- 362. — In general.
- 363. — Denial of or interference with rights in general.
- 364. — Discrimination in general.
- 365. — Retaliation in general.
- 366. — Motive or intent in general.
- 367. — Reinstatement; restoration.
 - (1). In general.
 - (2). Equivalent position.
 - (3). Maintenance of benefits.
 - (4). Exemptions and exceptions in general.
 - (5). Ability to perform.
- 368. — Discharge or layoff.
- 369. — Constructive discharge.
- 370. — Discipline.
- 371. — Other particular rights or violations.
- 372. Posting or other notice of statutory rights and obligations.

231H. LABOR AND EMPLOYMENT

VI. TIME OFF; LEAVE.(Cont'd)

- 373. Non-statutory rights; relationship to statutory rights.
- 378. Administrative agencies and proceedings.
- 379. Existence of other remedies; exclusivity.
Federal preemption, see §336.
- 380. Exhaustion of other remedies.
- 381. Actions.
- 382. — In general.
- 383. — Right of action.
- 384. — Persons protected and entitled to sue.
See also §337.
- 385. — Persons liable.
See also §343.
- 386. — Defenses; time to sue.
- 387. — Parties.
- 388. — Pleading.
- 389. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 390. — Trial.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Instructions.
- 391. — Judgment and relief in general.
Right to reinstatement following leave, see §367.
- 392. — Injunction.
- 393. — Monetary relief.
 - (1). In general.
 - (2). Nominal damages.
 - (3). Grounds and subjects.
 - (4). Back pay or lost earnings.
 - (5). Mental suffering, emotional distress, humiliation, or embarrassment.
 - (6). Measure and amount.
 - (7). Exemplary or punitive damages.
 - (8). Liquidated damages.
- 394. — Costs.
- 395. — Attorney fees.

VII. PENSION AND BENEFIT PLANS.

For public employee pensions see MUNICIPAL CORPORATIONS, STATES, UNITED STATES, etc.

(A) IN GENERAL.

- 400. In general.
- 401. Constitutional and statutory provisions.
- 402. — In general.
- 403. — Purpose.
- 404. — Validity.
- 405. — Retroactive application; effective date.
- 406. What law governs.
- 407. Preemption.
Excludes preemption of state laws regulating insurance, see INSURANCE §1117. *See also STATES* I(B).
- 408. Regulatory supervision.
- 409. Subpoenas.

(B) PLANS IN GENERAL.

- 411. In general.
- 411.5. What is a "benefit".
- 412. Plan as contract.
- 413. Existence of plan in general.
- 414. Plans subject to regulation in general.
- 415. Exempt plans.
- 416. — In general.
- 417. — Government plans.
- 418. — Church plans.
- 419. Pension plans.
- 420. — In general.
- 421. — What is a pension.
- 422. — Defined benefit plans.
- 423. — Defined contribution plans.
- 424. Welfare plans.
- 425. — In general.
- 426. — Medical and health plans.
- 427. — Disability plans.
- 428. — Life and accidental death or dismemberment plans.
- 429. — Severance and early retirement plans.
- 430. Plans not qualified for favorable tax treatment.
- 431. — In general.
See INTERNAL REVENUE §3575-3615 *for tax treatment of pension and deferred compensation plans.*
- 432. — "Top hat" plans.
- 433. Validity of plan.
- 434. — In general.
- 435. — Written agreement requirement.
- 436. — "Sole and exclusive benefit" requirement; anti-inurement rule.

231H. LABOR AND EMPLOYMENT

VII. PENSION AND BENEFIT PLANS.(Cont'd)

- 437. Interpretation of plan.
- 438. — In general.
Excludes interpretation of plan if inconsistent with summary plan description, see §483(2).
- 439. — Deference to plan administrator.
Degree of deference to be given to plan administrator's decision to deny benefits, see §685-690.
- 440. — Plain meaning.
- 441. — Construction in favor of participants or against drafter.
- 442. — Extrinsic evidence.
- 443. Amendment of plan.
- 444. — In general.
- 445. — Right to amend.
- 446. — Procedure to amend; oral modification.
Oral modification as grounds for estoppel to deny benefits, see §555.
- 447. — Retroactive effect.
Excludes retroactive change of eligibility or coverage rules or reduction of benefits; anti-cutback rule, see §554.
- 448. Termination of plan.
- 449. — In general.
- 450. — Right to terminate.
Termination of plan as form of discrimination or retaliation, see §793.
- 451. — Successive labor organizations.
- 452. — Cessation, reduction, or transfer of business.
- 453. — Partial termination.
- 454. — Procedure to terminate.

(C) FIDUCIARIES AND TRUSTEES.

- 459. In general.
- 460. Who are fiduciaries.
Excludes whether person who is a fiduciary is acting in fiduciary capacity, see §472.
- 461. — In general.
- 462. — Employers.
- 463. — Officers, directors and partners.
- 464. — Banks.
- 465. — Insurance companies and agents.
- 466. — Attorneys and other professionals.
- 467. — Advisors, consultants, and brokers.
- 468. — Unions.
- 469. Eligibility, appointment, tenure, and removal.
- 470. Equal representation requirement.
- 471. Compensation of fiduciaries.
- 472. What activities are in fiduciary capacity.
- 473. — In general.

VII. PENSION AND BENEFIT PLANS.(Cont'd)

- 474. — Amendment or termination of plan.
Excludes whether amendment or termination actually is breach of fiduciary duty, see §478.
- 475. Duties in general.
Prohibition on disciplining, discriminating or retaliating against participant or beneficiary for exercising rights, see §793.
- 476. Good faith in general.
- 477. Prudent person standard.
Prudent person standard as applying to investments or expenditures of plan assets, see §489.
- 478. Amendment or termination of plan as breach of duty.
- 479. Notice and disclosure requirements.
- 480. — In general.
- 481. — Participants' request for information.
Penalties for failure to provide information, see §661.
- 482. — Misrepresentations or omissions in general.
- 483. — Summary plan description.
 - (1). In general.
 - (2). Inconsistency with plan document.
- 484. — Amendment or termination of plan.
 - (1). In general.
 - (2). Contemplated changes.
- 485. — Notice of continuation coverage.
Whether employee is entitled to continuation coverage, see §568; penalties for failure to provide, see §663.
- 486. Conflicts of interest in general.
Excludes conflict of interest with respect to investments, see §487. Excludes conflict of interest in making benefit determinations, see §612.
- 487. Investments and expenditures.
- 488. — In general.
- 489. — Prudence.
- 490. — Diversification.
- 491. — Investments in securities or property of sponsor.
 - (1). In general.
 - (2). Employee stock ownership plans.
- 492. — Advisors and experts.
- 493. — Prohibited transactions; parties in interest.
- 494. — Participant loans.
- 495. Persons liable.
- 496. — In general.
- 497. — Co-fiduciaries; successor fiduciaries.
- 498. — Non-fiduciaries; parties in interest.

231H. LABOR AND EMPLOYMENT

(D) CONTRIBUTIONS AND FUNDING.

- 500. In general.
- 501. Employees for whom contributions must be made.
Eligibility to participate, see ¶531-545.
- 502. — In general.
- 503. — Independent contractors.
Excludes independent contractor as eligible to participate, see ¶539.
- 504. Parties who must make contributions.
- 505. — In general.
- 506. — Multi-employer plans.
- 507. — Alter ego doctrine; related entities.
- 508. — Successor entities.
- 509. Determination of contribution; amount.
- 510. Collective bargaining.
- 511. Recovery of contributions; overfunded plans.
- 512. — In general.
- 513. — Surplus funds in general.
- 514. — Excess or erroneous contributions.
- 515. — Residual assets; termination of plan.
- 516. Withdrawal or termination liability.
- 517. — In general.
- 518. — Predecessor or successor liability in general.
- 519. — Multi-employer plans.
 - (1). In general.
 - (2). Trade or business under common control.

(E) INSOLVENT OR UNDERFUNDED PLANS.

- 520. In general.
- 521. Insolvency and receivership.
- 522. Pension Benefit Guarantee Corporation; termination insurance.
- 523. — In general.
- 524. — Liability of employer; related or successor entities.
- 525. — Allocation and distribution of benefits.
- 526. — Proceedings.
- 527. — Judicial review.

(F) SPECIAL STATUTORY PROVISIONS.

- 528. In general.
- 529. Coal industry.

(G) ELIGIBILITY, PARTICIPATION, AND COVERAGE.

- 531. In general.
- 532. Eligibility rules in general.
- 533. Who is an employee or participant.
Excludes whether person is participant for purposes of standing to sue plan or fiduciary, see ¶646.
- 534. — In general.
- 535. — Non-union or management employees.
- 536. — Part-time, temporary, or leased employees.
- 537. — Shareholders, partners or owners of employer.
- 538. — Employees of predecessor or related entities.
- 539. — Independent contractors.
- 540. Waiver of right to participate.
Excludes waiver of payment of benefits, see ¶578.
- 541. Service credit for participation or vesting; minimum term.
- 542. — In general.
- 543. — Service before effective date of plan; retroactive service.
- 544. — Interrupted service; break in service.
- 545. — Service with predecessor, successor, or related employer.
- 546. Vesting.
- 547. — In general.
- 548. — Pension plans.
- 549. — Welfare plans.
 - (1). In general.
 - (2). Reservation of right to amend or terminate.
- 550. Forfeiture; loss of eligibility or coverage.
- 551. — In general.
- 552. — By current employees.
 - (1). In general.
 - (2). Termination of employment; misconduct.
 - (3). Forfeiture of continuation coverage; gross misconduct.
- 553. — By former employees or retirees.
 - (1). In general.
 - (2). Reemployment; new employment.
Forfeiture of severance benefits for reemployment, see ¶576.
 - (3). Misconduct; competition with employer.
- 554. Retroactive change of eligibility or coverage rules or reduction in benefits.

231H. LABOR AND EMPLOYMENT

VII. PENSION AND BENEFIT PLANS.(Cont'd)

555. Estoppel of plan to deny eligibility or coverage.

(H) COVERAGE AND BENEFITS OF PARTICULAR TYPES OF PLANS.

556. In general.

557. Pension and retirement plans.

558. — In general.

559. — Accrued benefit.

560. — Necessity of retirement; normal retirement age.

561. — Early retirement benefits.

562. — Anti-discrimination provisions.

Prohibition of discrimination as interference with protected rights, see ¶793.

563. — Amount of benefit and form of distribution.

(1). In general.

(2). Compensation used to determine benefit.

(3). Lump sum distribution.

(4). Interest.

Interest or discount rate used to calculate lump sum, see ¶563(3).

(5). Deductions and offsets.

564. Medical and health plans.

565. — In general.

566. — Conditions covered.

567. — Treatments and benefits covered.

568. — Continuation coverage.

Notice of continuation coverage, see ¶485, and penalties for failure to provide, see ¶663.

569. — Amount of benefits.

(1). In general.

(2). Deductions and offsets; coordination of benefits.

570. Disability plans.

571. — In general.

572. — Eligibility for benefits; conditions constituting disability.

Whether disability under social security is a determinative factor, see ¶629(3).

573. — Commencement and length of disability; elimination period.

574. — Amount of benefits.

(1). In general.

(2). Deductions and offsets; coordination of benefits.

575. Life and accidental death or dismemberment plans.

576. Severance plans.

(I) PERSONS ENTITLED TO BENEFITS.

577. In general.

578. Waiver of benefits.

579. — In general.

Excludes waiver of right to participate, see ¶540.

580. — Waiver by spouse or former spouse; effect of divorce.

Effect of divorce on designation of beneficiary, see ¶583.

581. Designation of beneficiary.

582. — In general.

583. — Effect of divorce on designation.

584. — Change of beneficiary.

(1). In general.

(2). Right to change.

(3). Mode and sufficiency; substantial compliance.

(4). Waiver and estoppel as to defects.

585. — Consent of spouse to designation of another.

586. Survivor and spousal benefits.

587. — In general.

Spousal waiver of benefits, see ¶580. Effect of divorce on beneficiary designation, see ¶583.

588. — Pre-retirement survivor annuity.

589. — Joint and survivor annuity.

590. Assignment of benefits.

591. — In general.

592. — Anti-alienation.

593. — Use of funds as restitution for criminal sentence.

594. Qualified domestic relations orders.

595. — In general.

596. — Necessity and sufficiency of order.

597. — Operation and effect.

598. Recovery of payments of benefits by plan.

599. — In general.

600. — Erroneous payment or overpayment.

601. — Fraud or misconduct of claimant.

602. — Subrogation to or reimbursement of plan or insurer.

(1). In general.

(2). Made whole doctrine.

(J) DETERMINATION OF BENEFIT CLAIMS BY PLAN.

610. In general.

611. Discretion of administrator; good faith.

Discretion of administrator as determining standard of review, see ¶684.

231H. LABOR AND EMPLOYMENT

VII. PENSION AND BENEFIT PLANS.(Cont'd)

612. Conflict of interest of administrator.
Conflict of interest as affecting standard of review, see
690.
613. Filing of application or claim; notice to plan.
614. Conditions precedent.
615. Time limitations for filing.
616. Investigation and discovery.
617. Notice of denial or determination; statement of reasons.
618. — In general.
619. — Substantial compliance.
620. Administrative review.
621. — In general.
622. — Filing of claim or appeal; notice to plan.
623. — Time limitations.
624. — Investigation and discovery.
625. — Hearing or review proceeding.
626. — Notice of determination; statement of reasons.
627. Evidence in determination or review proceeding.
628. — In general.
629. — Disability claims.
- (1). In general.
- (2). Weight and sufficiency.
- (3). Disability under social security as determining factor.

(K) ACTIONS.

1. IN GENERAL.

630. In general.
631. Jurisdiction and venue.
632. Parties in general; standing.
633. Time to sue and limitations.
634. Pleading.
635. Exhaustion of remedies.
636. Standard and scope of review.
637. Evidence.
638. Questions of law or fact.
639. Judgment and relief.

2. ACTIONS FOR REGULATORY SUPERVISION.

640. In general.
641. Subpoenas.
642. Judicial review.

3. ACTIONS TO ENFORCE STATUTORY OR FIDUCIARY DUTIES.

643. In general.
644. Adequacy of other remedies.
645. Jurisdiction and venue.
646. Parties in general; standing.
647. Action on behalf of plan or as individual.
648. Time to sue and limitations.
649. Pleading.
650. Exhaustion of remedies.
651. Standard and scope of review.
652. Evidence.
653. — In general.
654. — Presumptions and burden of proof.
655. — Admissibility.
656. — Weight and sufficiency.
657. Questions of law or fact.
658. Judgment and relief.
659. — In general.
660. — Equitable relief; injunction.
661. — Penalties.
662. — Damages.
663. — Continuation coverage violations.
664. Indemnification and contribution among fiduciaries.

4. ACTIONS TO ENFORCE CONTRIBUTIONS.

665. In general.
666. Jurisdiction and venue.
667. Parties in general; standing.
668. Time to sue and limitations.
669. Pleading.
670. Exhaustion of remedies.
671. Standard and scope of review.
672. Defenses.
673. Evidence.
674. Questions of law or fact.
675. Judgment and relief.

5. ACTIONS TO RECOVER BENEFITS.

676. In general.
677. Jurisdiction and venue.
678. Parties in general; standing.
679. Time to sue and limitations.
680. Pleading.
681. Exhaustion of remedies.
682. — In general.
683. — Excuse; futility.

231H. LABOR AND EMPLOYMENT

VII. PENSION AND BENEFIT PLANS.(Cont'd)

- 684. Standard and scope of review.
- 685. — In general.
- 686. — De novo.
- 687. — Arbitrary and capricious.
- 688. — Abuse of discretion.
- 689. — Procedural irregularities; heightened standard of review.
Heightened standard of review due to conflict of interest, see ¶690.
- 690. — Effect of administrator's conflict of interest.
- 691. Record on review.
- 692. Evidence.
- 693. — In general.
- 694. — Presumptions and burden of proof.
- 695. — Admissibility.
- 696. — Weight and sufficiency.
 - (1). In general.
 - (2). Disability claims.
- 697. Questions of law or fact.
- 698. Judgment and relief.
- 699. — In general.
- 700. — Equitable relief; injunction.
- 701. — Penalties.
- 702. — Damages.
- 703. — Interest.
- 704. — Remand to administrator.

6. ACTIONS AGAINST PARTICIPANTS OR BENEFICIARIES OR OTHER RECIPIENTS.

- 705. In general.
- 706. Reimbursement or subrogation.

7. COSTS AND ATTORNEY FEES.

- 708. In general.
- 709. Discretion of court.
- 710. Presumptions in general.
- 711. Factors considered in general.
- 712. Result or outcome of litigation.
- 713. Particular cases.
- 714. — In general.
- 715. — Actions to enforce statutory or fiduciary duties.
- 716. — Actions to enforce contributions.
- 717. — Actions to recover benefits.
- 718. — Actions against participants or beneficiaries.
- 719. Amount.

VII. PENSION AND BENEFIT PLANS.(Cont'd)

- 720. — In general.
- 721. — Lodestar method.
- 722. Review.

VIII. ADVERSE EMPLOYMENT ACTION.

Adverse action relating to family and medical leave, see VI. Unfair labor practices, see XII(G). Discrimination and retaliation claims under civil rights statutes, or based on public policy against discrimination, see CIVIL RIGHTS.

(A) IN GENERAL.

- 750. In general.
- 751. Constitutional and statutory provisions.
- 752. — In general.
- 753. — Purpose and construction in general.
- 754. — Validity.
- 755. — Retroactive application.
- 756. What law governs.
- 757. Preemption.
See also STATES I(B).
- 758. Wrongful discharge in general.
- 759. Public policy considerations in general.
- 760. Reasons or grounds for adverse action.
- 761. — In general.
- 762. — Motive, intent, pretext, and causation in general.
- 763. — Conduct or misconduct in general.
- 764. — Qualifications of employee.
- 765. — Competence or performance of employee.
- 766. — Disobedience or insubordination.
- 767. — Alcohol or drug use.
- 768. — Garnishment; bankruptcy; economic problems of employee.
- 769. — Economic or competitive interests of employer.
- 770. Exercise of rights or duties; retaliation.
- 771. — In general.
- 772. — Protected activities in general.
- 773. — Motive, intent, and pretext in general.
- 774. — Causation in general.
- 775. Reporting or opposing wrongdoing; criticism and "whistleblowing".
- 776. — In general.
- 777. — Particular cases in general.
- 778. — Protected activities.
- 779. — Motive and intent; pretext.

231H. LABOR AND EMPLOYMENT

VIII. ADVERSE EMPLOYMENT ACTION.(Cont'd)

- 780. — Causal connection; temporal proximity.
- 781. Refusal to engage in wrongdoing.
- 782. — In general.
- 783. — Particular cases in general.
- 784. — Protected activities.
- 785. — Motive and intent; pretext.
- 786. — Causal connection; temporal proximity.
- 787. Wages and hours.
- 788. — In general.
- 789. — Particular cases in general.
- 790. — Protected activities.
- 791. — Motive and intent; pretext.
- 792. — Causal connection; temporal proximity.
- 793. Pensions and benefits.
- 794. — In general.
- 795. — Particular cases in general.
- 796. — Protected activities.
- 797. — Motive and intent; pretext.
- 798. — Causal connection; temporal proximity.
- 799. Health and safety.
- 800. — In general.
- 801. — Particular cases in general.
- 802. — Protected activities.
- 803. — Motive and intent; pretext.
- 804. — Causal connection; temporal proximity.
- 805. Workers' compensation.
- 806. — In general.
- 807. — Particular cases in general.
- 808. — Protected activities.
- 809. — Motive and intent; pretext.
- 810. — Causal connection; temporal proximity.
- 811. Constitutional or political rights.
See also CIVIL RIGHTS, CONSTITUTIONAL LAW.
- 812. — In general.
- 813. — Particular cases in general.
- 814. — Protected activities.
- 815. — Motive and intent; pretext.
- 816. — Causal connection; temporal proximity.
- 817. Other particular rights or contexts.
- 818. — In general.

VIII. ADVERSE EMPLOYMENT ACTION.(Cont'd)

- 819. — Particular cases in general.
- 820. — Protected activities.
- 821. — Motive and intent; pretext.
- 822. — Causal connection; temporal proximity.
- 823. What constitutes adverse action.
- 824. — In general.
- 825. — Discharge or layoff.
- 826. — Constructive discharge.
- 827. — Other particular actions.
- 828. Procedural requirements for adverse action; prerequisites.
- 829. — In general.
- 830. — Notice and warnings.
- 831. — Service letter or statement of cause.
- 832. — Investigations.
- 833. Express or implied contracts, adverse action under.
- 834. — In general.
- 835. — Discharge or layoff.
- 836. — Other adverse actions.
- 837. — Procedural requirements; prerequisites.
- 838. Manuals, handbooks, and policy statements, adverse action under.
- 839. — In general.
- 840. — Particular cases.
- 841. Good faith and fair dealing; bad faith.
- 842. — In general.
- 843. — Discharge or layoff.
- 844. — Other adverse actions.
- 845. Administrative agencies and proceedings.
- 846. — In general.
- 847. — Judicial review and enforcement.

(B) ACTIONS.

- 850. In general.
- 851. Nature and form.
- 852. Existence of other remedies; exclusivity.
- 853. Conditions precedent in general.
- 854. Exhaustion.
- 855. Defenses in general.
- 856. Time for proceedings; limitations.
- 857. Persons protected, persons liable, and parties; standing.

231H. LABOR AND EMPLOYMENT

VIII. ADVERSE EMPLOYMENT ACTION.(Cont'd)

- 858. Pleading.
- 859. Evidence.
Evidence of employment, see ¶53.
- 860. — In general.
- 861. — Presumptions and burden of proof.
- 862. — Admissibility.
- 863. — Weight and sufficiency.
 - (1). In general.
 - (2). Exercise of rights or duties; retaliation.
- 864. Monetary relief; damages.
- 865. — In general.
- 866. — Grounds and subjects.
- 867. — Measure and amount.
- 868. — Aggravation, mitigation, or reduction of loss.
 - (1). In general.
 - (2). Other employment.
 - (3). — In general.
 - (4). — Nature of work; extent of employee's efforts.
 - (5). — Working for former employer; re-employment.
 - (6). — Self-employment.
 - (7). Other particular matters.
- 869. — Nominal damages.
- 870. — Exemplary or punitive damages.
- 871. — Evidence as to damages.
- 872. Trial in general.
- 873. Questions of law or fact.
Questions of law and fact as to employment status, see ¶58.
- 874. Instructions.
- 875. Judgment and relief.
- 876. — In general.
- 877. — Reinstatement.
- 878. Costs.
- 879. — In general.
- 880. — Attorney fees.

IX. INTERFERENCE WITH THE EMPLOYMENT RELATIONSHIP.

- 900. In general.
- 901. What law governs.
- 902. Preemption.
See also STATES I(B).
- 903. Contracts or relationships susceptible or subject to interference.
- 904. Elements.

IX. INTERFERENCE WITH THE EMPLOYMENT RELATIONSHIP.(Cont'd)

- 905. Injury.
- 906. Nature of action.
- 907. Enticing employee to leave employment.
- 908. — In general.
- 909. — Competitors.
- 910. Intimidation, coercion, or violence to prevent service.
- 911. Persons liable in general.
- 912. Procurement of discharge.
- 913. — In general.
- 914. — Persons liable.
- 915. Actions in general.
- 916. — In general.
- 917. — Pleading.
- 918. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Weight and sufficiency.
- 919. Trial; questions of law or fact.
- 920. Instructions.
- 921. Damages.
- 922. — In general.
- 923. — Punitive or exemplary damages.

X. APPRENTICES.

- 925. In general.
- 926. Nature.
- 927. Constitutional and statutory provisions.
- 928. Preemption.
See also STATES I(B).
- 929. Eligibility.
- 930. Compensation and benefits.

XI. EMPLOYMENT AGENCIES.

- 935. In general.
- 936. Constitutional and statutory provisions.
- 937. Regulation and regulatory agencies.
- 938. Private agencies.
- 939. Public agencies.
- 940. Contracts.
- 941. — In general.
- 942. — Validity.
- 943. — Operation and effect.
- 944. Compensation and fees.
- 945. — In general.
- 946. — Amount.

231H. LABOR AND EMPLOYMENT

XI. EMPLOYMENT AGENCIES. (Cont'd)

- 947. — Persons liable.
- 948. — Persons entitled; necessity of license.
- 949. Actions and proceedings.
- 950. — In general.
- 951. — Conditions precedent; exhaustion.
- 952. — Evidence.
- 953. — Review.

XII. LABOR RELATIONS.

(A) IN GENERAL.

- 960. In general.
- 961. Power to regulate.
- 962. What law governs.
- 963. Constitutional and statutory provisions.
- 964. — In general.
- 965. — Purpose.
- 966. — Validity.
- 967. — Retroactive operation.
- 968. Preemption.
See also STATES I(B).
- 969. Municipal ordinances.
- 970. Construction and operation of statutes, ordinances, and regulations, in general.
- 971. Employments included within acts in general.
- 972. — In general.
- 973. — Carriers.
- 974. — Charitable, educational, and non-profit enterprises.
- 975. — Public employment.
- 976. Employers subject to acts.
- 977. Employees within acts.
- 978. — In general.
- 979. — Particular persons.
- 980. — Agricultural laborers.
- 981. — Guards.
- 982. — Supervisory personnel.
- 983. — Termination of employment; strikers.
- 984. Rights of employees in general.
- 985. Rights and duties of employers in general.
 - (1). In general.
 - (2). Records and reports; disclosure.
- 986. Rules and regulations in general.

(B) LABOR ORGANIZATIONS.

- 987. In general.
- 988. Nature and status in general.
- 989. Constitutional and statutory provisions.
- 990. — In general.
- 991. — Purpose.
- 992. — Validity.
 - (1). In general.
 - (2). Officers and elections.
- 993. — Retroactive operation.
- 994. What law governs.
- 995. Preemption.
See also STATES I(B).
- 996. Right to organize, and legality.
- 997. — In general.
- 998. — Purpose of organization.
- 999. — Public employees.
- 1000. Incorporation and organization.
- 1001. Powers of organizations in general.
- 1002. Property and funds in general.
- 1003. Records and reports; disclosure.
- 1004. Union label.
- 1005. Judicial review or intervention in internal affairs.
- 1006. — In general.
- 1007. — Exhaustion of internal remedies.
- 1008. Constitutions, by-laws and rules.
- 1009. — In general.
- 1010. — Power to adopt and validity in general.
- 1011. — Operation as contract.
- 1012. — Adoption, amendment, and repeal.
- 1013. — Particular regulations.
- 1014. — Judicial review or intervention.
- 1015. Membership.
- 1016. — In general.
- 1017. — Right to join or not to join.
- 1018. — Solicitation of members.
- 1019. — Eligibility and right to membership.
- 1020. — Admission or readmission of members; transfer of membership.
- 1021. — Judicial review or intervention.
- 1022. Rights, duties and obligations of members in general.
- 1023. — In general.
- 1024. — Right to disclosure and inspection of records.

231H. LABOR AND EMPLOYMENT

XII. LABOR RELATIONS.(Cont'd)

- 1025. — Speech, association and assembly rights.
- 1026. — Voting rights in general.
- 1027. — Classification and discrimination; seniority rights.
- 1028. — Benefits and property rights.
- 1029. — Contracts.
- 1030. — Judicial review or intervention.
- 1031. Dues, fees, and assessments.
- 1032. — In general.
- 1033. — Persons liable in general.
- 1034. — Use of funds.
 - (1). In general.
 - (2). Political activities.
- 1035. — Notice and disclosure.
- 1036. — Amount.
- 1037. — Payment.
 - (1). In general.
 - (2). Check-off.
- 1038. — Refund.
- 1039. — Non-members; fair share.
 - (1). In general.
 - (2). Use of funds in general.
 - (3). Political activities.
 - (4). Notice and disclosure.
 - (5). Amount.
 - (6). Payment.
 - (7). Refund.
- 1040. — Judicial review or intervention.
- 1041. Withdrawal or resignation of members.
- 1042. Expulsion, suspension or other discipline of members.
- 1043. — In general.
- 1044. — Persons subject to discipline.
- 1045. — Grounds.
 - (1). In general.
 - (2). Particular cases.
- 1046. — Proceedings.
 - (1). In general.
 - (2). Composition of tribunal and jurisdiction.
 - (3). Charges.
 - (4). Notice.
 - (5). Hearing.
 - (6). Evidence.
 - (7). Internal appeal.
- 1047. — Judicial review or intervention.
 - (1). In general.

XII. LABOR RELATIONS.(Cont'd)

- (2). Exhaustion of internal remedies in general.
- (3). Reinstatement.
- (4). Scope of review.
- 1048. Actions for damages.
- 1049. — In general.
- 1050. — Evidence.
- 1051. — Measure and amount of damages.
- 1052. — Questions of fact.
- 1053. — Costs and attorney fees.
- 1054. Meetings.
- 1055. — In general.
- 1056. — Notice.
- 1057. Officers and committees.
- 1058. — In general.
- 1059. — Eligibility and qualifications.
- 1060. Election or appointment of officers.
- 1061. — In general.
- 1062. — Nominations.
- 1063. — Campaigns.
- 1064. — Eligibility to vote.
- 1065. — Conduct of election.
- 1066. — Challenge to election.
 - (1). In general.
 - (2). Administrative proceedings.
 - (3). Judicial review or intervention.
- 1067. Tenure of officers; removal or suspension.
- 1068. — In general.
- 1069. — Grounds.
- 1070. — Proceedings.
- 1071. — Judicial review or intervention.
- 1072. Compensation of officers.
- 1073. Authority and powers of officers.
- 1074. Duties and liabilities of officers.
- 1075. — In general.
- 1076. — Union funds in general.
- 1077. — Accounting and reporting.
- 1078. — Judicial review or intervention.
- 1079. Superior, subordinate, and federated bodies.
- 1080. — In general.
- 1081. — Rights as between affiliate and general organization.
- 1082. — Rights and controversies between affiliates; jurisdictional disputes.
- 1083. — Liability of general organization for acts of affiliates.

231H. LABOR AND EMPLOYMENT

XII. LABOR RELATIONS.(Cont'd)

- 1084. — Discipline of affiliates in general.
- 1085. — Trusteeship.
 - (1). In general.
 - (2). Grounds.
 - (3). Proceedings.
 - (4). Operation and effect.
- 1086. — Revocation or suspension of charter.
- 1087. — Disaffiliation.
- 1088. — Property and funds.
- 1089. — Judicial review or intervention.
 - (1). In general.
 - (2). Exhaustion of internal remedies.
 - (3). Trusteeship.
- 1090. Receivership.
- 1091. Merger and dissolution.

(C) COLLECTIVE BARGAINING.

- 1100. In general.
- 1101. Constitutional and statutory provisions.
- 1102. — In general.
- 1103. — Purpose.
- 1104. — Validity.
- 1105. — Retroactive operation.
- 1106. What law governs.
- 1107. Preemption.

See also STATES I(B).
- 1108. Right to bargain collectively.
- 1109. — In general.
- 1110. — Waiver or loss of right.
- 1111. Duty to bargain collectively.
- 1112. — In general.
- 1113. — Nature and scope of duty in general.
- 1114. — Good faith in general.
- 1115. — Public employers.
- 1116. Disclosure of information relevant to bargaining.
 - 1117. — In general.
 - 1118. — Particular subjects of disclosure.
 - 1119. — Adequacy of disclosure.
 - 1120. — Public employers.
 - 1121. Subjects of bargaining in general.
 - 1122. Public employment in general.
 - 1123. Particular subjects of bargaining.
 - 1124. — In general.
 - 1125. — Mandatory subjects in general.
 - 1126. — Permissive subjects in general.

XII. LABOR RELATIONS.(Cont'd)

- 1127. — Illegal or nonnegotiable subjects in general.
- 1128. — Wages and hours.
- 1129. — Benefits in general.
- 1130. — Medical benefits.
- 1131. — Pensions and retirement.
- 1132. — Sick leave, vacation, and holidays.
- 1133. — Discipline.
- 1134. — Health and safety in general.
- 1135. — Smoking and tobacco policies.
- 1136. — Alcohol and drug policies; testing.
- 1137. — Seniority.
- 1138. — Work assignments; transfers.
- 1139. — Promotions.
- 1140. — Layoffs; contracting out work.
- 1141. — Grievance and arbitration procedures.
- 1142. Conduct of negotiations.
- 1143. — In general.
- 1144. — Notice.
- 1145. — Impasse.
- 1146. Individual contracts.

(D) BARGAINING REPRESENTATIVES.

- 1150. In general.
- 1151. Constitutional and statutory provisions.
- 1152. — In general.
- 1153. — Purpose.
- 1154. — Validity.
- 1155. — Retroactive operation.
- 1156. What law governs.
- 1157. Preemption.

See also STATES I(B).
- 1158. Freedom in choice of representative; self-organization.
- 1159. Who may act as representative.
 - 1160. — In general.
 - 1161. — Majority representation.
 - 1162. — Local, inside, or independent union.
 - 1163. — Organization favored by employer.
 - 1164. — Successor to favored union.
 - 1165. — Persons authorized to conduct negotiations.
- 1166. Designation of representative.
- 1167. — In general.

231H. LABOR AND EMPLOYMENT

XII. LABOR RELATIONS.(Cont'd)

- 1168. — Voluntary recognition.
- 1169. — Authorization cards.
 - (1). In general.
 - (2). Form and contents.
 - (3). Validity in general.
 - (4). Fraud and misrepresentation.
- 1170. — Persons counted in determining majority.
- 1171. Bargaining units.
- 1172. — In general.
- 1173. — Community of interest in general.
- 1174. — Craft or class or industrial unit.
- 1175. — Plant or larger unit.
- 1176. — Single or joint employer.
- 1177. — Multiemployer unit.
- 1178. — Supervisory employees.
 - (1). In general.
 - (2). Particular employees.
- 1179. — Confidential employees; labor nexus.
- 1180. — Employees' family relationship.
- 1181. — Agreement or stipulation.
- 1182. — Particular units.
- 1183. — Modification of unit in general.
- 1184. — Accretion; new employees.
- 1185. — Administrative proceedings.
 - (1). In general.
 - (2). Jurisdiction.
 - (3). Discretion.
 - (4). Time for proceedings.
 - (5). Parties.
 - (6). Notice.
 - (7). Evidence in general.
 - (8). Presumptions and burden of proof.
 - (9). Admissibility.
 - (10). Weight and sufficiency.
 - (11). Hearing.
 - (12). Orders.
- 1186. Election of representative.
- 1187. — In general.
- 1188. — Right to election.
- 1189. — Petition for election.
 - (1). In general.
 - (2). Dismissal.
- 1190. — Campaign.
 - (1). In general.
 - (2). Union's conduct.

XII. LABOR RELATIONS.(Cont'd)

- (3). Employer's conduct.
- 1191. — Eligibility to vote.
 - (1). In general.
 - (2). Particular employees.
- 1192. — Ballots.
 - (1). In general.
 - (2). Form and contents.
- 1193. — Conduct of election.
 - (1). In general.
 - (2). Observers.
 - (3). Intimidation.
- 1194. — Determination of result.
- 1195. — Administrative review of election.
 - (1). In general.
 - (2). Proceedings in general.
 - (3). Time for proceedings.
 - (4). Evidence in general.
 - (5). Presumptions and burden of proof.
 - (6). Admissibility.
 - (7). Weight and sufficiency.
 - (8). Hearing.
 - (9). Relief in general.
 - (10). New election.
- 1196. — Operation and effect of election.
- 1197. Certification of bargaining representative.
 - (1). In general.
 - (2). Operation and effect.
- 1200. Extent of authority and duties of representative in general.
- 1201. — In general.
- 1202. — Litigation authority.
- 1203. — Representation of non-members.
- 1204. — Contract negotiations.
- 1205. — Concerted activities.
- 1206. — Seniority rights.
- 1207. Duty to act impartially and without discrimination; fair representation.
- 1208. — In general.
- 1209. — Discrimination.
 - (1). In general.
 - (2). Union membership.
 - (3). Seniority.
- 1210. — Contract negotiations.
- 1211. — Concerted activities.
- 1212. — Job referral; hiring hall.
- 1213. — Grievances in general.

231H. LABOR AND EMPLOYMENT

XII. LABOR RELATIONS.(Cont'd)

- 1214. — Discretion in processing grievances.
 - 1215. — Duty to investigate grievances.
 - 1216. — Providing counsel.
 - 1217. — Settlement of grievances.
 - 1218. — Particular grievances.
 - 1219. — Actions for breach of duty.
 - (1). In general.
 - (2). Exhaustion of internal remedies.
 - (3). Jurisdiction and venue.
 - (4). Time to sue, limitations, and laches.
- See also LIMITATION OF ACTIONS.*
- (5). Parties; standing.
 - (6). Representative or class actions.
 - (7). Process and appearance.
 - (8). Pleading.
 - (9). Evidence in general.
 - (10). Presumptions and burden of proof.
 - (11). Admissibility.
 - (12). Weight and sufficiency of evidence.
 - (13). Trial in general.
 - (14). Questions of law and fact.
 - (15). Instructions.
 - (16). Verdict and findings.
 - (17). Damages.
 - (18). Judgment and execution.
 - (19). Costs and attorney fees.
- 1220. Ratification.
 - 1221. Duration and termination of authority.
 - 1222. — In general.
 - 1223. — Loss of majority support in general.
 - 1224. — Presumption of majority support; certification period.
 - 1225. — Change in ownership; successor employers.
 - 1226. — Multiemployer units.
 - 1227. — Workplace relocation.
 - 1228. — Modification of employer's business.
 - 1229. — Duration of collective bargaining agreement; contract bar rule.
 - 1230. — Change in affiliation or union organization.
 - 1231. — Employee turnover.
 - 1232. — Decertification proceedings.

(E) LABOR CONTRACTS.

- 1235. In general.
- 1236. Right to contract.
- 1237. Constitutional and statutory provisions.
- 1238. — In general.
- 1239. — Purpose.
- 1240. — Validity.
- 1241. — Retroactive operation.
- 1242. What law governs.
- 1243. Preemption.
See also STATES I(B).
- 1244. Prehire agreements.
- 1245. Duty to enter into contract.
- 1246. Making and requisites.
- 1247. — In general.
- 1248. — Writing.
- 1249. — Signature.
- 1250. — Ratification or approval.
- 1251. — Public employment.
- 1252. Validity or propriety.
- 1253. — In general.
- 1254. — Duress.
- 1255. — Particular provisions in general.
- 1256. — Discrimination.
- 1257. — Seniority rights.
- 1258. — Concerted activities.
- 1259. — Dues and fees.
- 1260. — Hot cargo clauses; secondary activities.
- 1261. — Subcontracting.
- 1262. — Wages and hours.
- 1263. — Benefits.
- 1264. — Closed or union shop agreements.
 - (1). In general.
 - (2). Particular agreements.
 - (3). Majority representation and absence of unfair practice.
 - (4). Creation of monopoly.
- 1265. — Public employment.
- 1266. — Waiver.
- 1267. — Estoppel.
- 1268. Construction.
- 1269. — In general.
- 1270. — Purpose of agreement.
- 1271. — Intent of parties.
- 1272. — Language of agreement.
- 1273. — Negotiations; extrinsic circumstances.
- 1274. — Construction by parties.

231H. LABOR AND EMPLOYMENT

XII. LABOR RELATIONS.(Cont'd)

- 1275. — Particular provisions.
- 1276. — Management rights.
- 1277. — Merger or zipper clause.
- 1278. — Concerted activities.
- 1279. — Wages and hours.
- 1280. — Benefits.
- 1281. — Classification and seniority rights.
- 1282. — Closed or union shop; check-off.
- 1283. — Discipline.
- 1284. — Discharge.
 - (1). In general.
 - (2). Grounds for discharge.
 - (3). Discharge procedures.
- 1285. — Layoffs.
- 1286. — Waiver.
- 1287. Parties; employees covered.
- 1288. — In general.
- 1289. — Single employer status.
- 1290. — Joint employers.
- 1291. — Successor employers.
- 1292. — Workplace relocation.
- 1293. — Successor unions.
- 1294. — Affiliated unions.
- 1295. — Individual employees.
 - (1). In general.
 - (2). Union membership.
- 1296. Duration and termination.
- 1297. — In general.
- 1298. — Extension or renewal.
- 1299. — Termination in general.
- 1300. — Notice of termination.
- 1301. — Loss of majority status; decertification.
- 1302. — Operation and effect of termination.
- 1303. Modification.
- 1304. — In general.
- 1305. — Notice.
- 1306. Rescission.
- 1307. — In general.
- 1308. — Grounds.
- 1309. Performance or breach.
- 1310. — In general.
- 1311. — Concerted activities.
- 1312. — Hours and wages.
- 1313. — Pensions and other benefits.
- 1314. — Classification and seniority rights.
- 1315. — Discharge.

XII. LABOR RELATIONS.(Cont'd)

- 1316. — Layoffs.
- 1317. — Grievances and arbitration.
- 1318. Actions for breach.
- 1319. — In general.
- 1320. — Exhaustion of internal remedies.
 - (1). In general.
 - (2). Exceptions in general.
 - (3). Repudiation.
 - (4). Union's breach of duty.
 - (5). Futility.
 - (6). Particular claims in general.
 - (7). Working conditions; safety.
 - (8). Wages and bonuses.
 - (9). Pensions and other benefits.
 - (10). Hours.
 - (11). Classification and seniority rights.
 - (12). Discrimination.
 - (13). Discipline.
 - (14). Discharge and layoff.
 - (15). Contracting out work.
 - (16). Concerted activities.
- 1321. — Jurisdiction and venue.
- 1322. — Time to sue, limitations, and laches.
See also LIMITATION OF ACTIONS.
- 1323. — Parties; standing.
- 1324. — Representative or class actions.
- 1325. — Process and appearance.
- 1326. — Pleading.
- 1327. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency of evidence.
- 1328. — Trial.
 - (1). In general.
 - (2). Questions of law and fact.
 - (3). Instructions.
 - (4). Verdict and findings.
- 1329. — Damages.
- 1330. — Judgment and execution.
- 1331. — Costs and attorney fees.

231H. LABOR AND EMPLOYMENT

(F) DISPUTES AND CONCERTED ACTIVITIES.

1. IN GENERAL.

- 1340. In general.
- 1341. Power to regulate.
- 1342. Constitutional and statutory provisions.
- 1343. — In general.
- 1344. — Purpose.
- 1345. — Validity.
 - (1). In general.
 - (2). Picketing.
 - (3). Strikes.
- 1346. — Retroactive operation.
- 1347. Picketing ordinances.
- 1348. What law governs.
- 1349. Preemption.
See also STATES 1(B).
- 1350. Activities of individual employees.
- 1351. — In general.
- 1352. — Particular actions.

2. NATURE OF DISPUTE AND PURPOSE OF ACTIVITY.

- 1353. In general.
- 1354. Object or purpose of activity in general.
- 1355. Nature and existence of dispute in general.
- 1356. Existence of strike or lockout.
- 1357. Termination of employment or dispute.
- 1358. Particular disputes or purposes.
- 1359. — In general.
- 1360. — Unionization or closed shop.
- 1361. — Collective bargaining.
- 1362. — Employment or discharge.
- 1363. — Discrimination.
- 1364. — Injury to or interference with business.
- 1365. — Wages and hours.
- 1366. — Working conditions.
- 1367. Unlawful purpose.

3. NATURE OF ACTIVITY.

- 1370. In general.
- 1371. Publicity.
- 1372. Persuasion; inducing breach of contract.
- 1373. Refusal of or withdrawal from employment.
- 1374. Picketing.
- 1375. — In general.

XII. LABOR RELATIONS.(Cont'd)

- 1376. — Right to picket in general.
- 1377. — Waiver of right.
- 1378. — Conditions precedent.
- 1379. — Mode and conduct in general.
- 1380. — Mass picketing.
- 1381. — Place of picketing.
- 1382. Signs and banners; truth of representations.
- 1383. Leaflets and newsletters.
- 1384. Strikes.
- 1385. — In general.
- 1386. — Right to strike and legality in general.
- 1387. — Unfair labor practice strikes.
- 1388. — Health and safety; dangerous conditions.
- 1389. — Waiver of right; no-strike clauses.
- 1390. — Conditions precedent.
- 1391. — Conduct of strike and strike-breaking.
- 1392. Lockouts.
- 1393. Boycotts.
- 1394. Threats or coercion.
- 1395. Intimidation and violence.
- 1396. Obstructing access and seizure of property.

4. PERSONS CONCERNED.

- 1400. In general.
- 1401. Small or owner-operated business.
- 1402. Rival unions; jurisdictional disputes.

5. SECONDARY PRESSURES.

- 1403. In general.
- 1404. Absence of dispute between employer and employees.
- 1405. Activity by persons other than employees in general.
- 1406. Nature of dispute and purpose of activity.
- 1407. — In general.
- 1408. — Unionization or closed shop.
- 1409. Particular activities.
- 1410. — In general.
- 1411. — Picketing.
- 1412. — Boycotts of goods.
- 1413. — Refusal to handle goods; "hot cargo".

231H. LABOR AND EMPLOYMENT

XII. LABOR RELATIONS.(Cont'd)

- 1414. — Strikes in general.
- 1415. — Sympathy strikes and similar expressions of indirect interest.

6. PUBLIC EMPLOYEES.

- 1416. In general.
- 1417. Activities of individual employees.
- 1418. Nature of activity.
- 1419. — In general.
- 1420. — Picketing.
- 1421. — Strikes.
 - (1). In general.
 - (2). Right to strike in general.
 - (3). Particular employees.
- 1422. Nature of dispute and purpose of activity.
- 1423. — In general.
- 1424. — Particular disputes or purposes.
- 1425. Secondary pressures.
- 1426. Rival unions; jurisdictional disputes.

(G) UNFAIR LABOR PRACTICES.

- 1427. In general.
- 1428. Constitutional and statutory provisions.
- 1429. — In general.
- 1430. — Purpose.
- 1431. — Validity.
- 1432. — Retroactive operation.
- 1433. What law governs.
- 1434. Preemption.
See also STATES I(B).
- 1435. Unfair practices of employer in general.
- 1436. Strikes and their effect on rights of employees.
- 1437. Particular acts of employer in general.
- 1438. Grievances and arbitration.
- 1439. Interference, restraint, or coercion in general.
- 1440. Intent or motive in general; pretext.
- 1441. Litigation.
- 1442. Discrimination.
- 1443. — In general.
- 1444. — Intent or motive.
- 1445. — Particular acts.
- 1446. Employment.
- 1447. — In general.
- 1448. — During strike.
- 1449. Discipline in general.

XII. LABOR RELATIONS.(Cont'd)

- 1450. Discharge.
- 1451. — In general.
- 1452. — Constructive discharge.
- 1453. — Discharge of supervisors.
- 1454. — Motive or intent in general.
- 1455. — Particular grounds for discharge.
 - (1). In general.
 - (2). Work performance.
 - (3). Violation of work rules.
 - (4). Absenteeism; tardiness.
 - (5). Insubordination or disobedience.
 - (6). Concerted or union activities in general.
 - (7). Organizing activities; solicitation.
- 1456. — Non-membership in union; closed or union shop contracts.
- 1457. — Striking employees.
 - (1). In general.
 - (2). Replacement workers.
 - (3). Misconduct during strike.
- 1458. Layoff.
- 1459. Reinstatement.
- 1460. — In general.
- 1461. — Striking employees.
 - (1). In general.
 - (2). Motive or intent.
 - (3). Business justification.
 - (4). Economic or unfair labor practice strikers.
 - (5). Replacement workers.
 - (6). Misconduct during strike.
 - (7). Seniority rights.
- 1462. Assistance to union.
- 1463. Domination of union.
- 1464. Espionage or surveillance.
- 1465. — In general.
- 1466. — Particular conduct.
- 1467. Interrogation of employees.
- 1468. — In general.
- 1469. — Particular conduct.
 - (1). In general.
 - (2). Polling.
- 1470. — Judicial or administrative proceedings, interrogation in connection with.
- 1471. Expression of views.
- 1472. — In general.

231H. LABOR AND EMPLOYMENT

XII. LABOR RELATIONS.(Cont'd)

- 1473. — Particular statements or expressions.
 - (1). In general.
 - (2). Predicting consequences of unionization.
 - (3). Promises of benefits.
 - (4). Threats of reprisal.
- 1474. Pressure to join specific union.
- 1475. Prohibiting union solicitation or activity.
- 1476. — In general.
- 1477. — Particular restrictions.
 - (1). In general.
 - (2). Non-employees.
 - (3). Time.
 - (4). Place.
- 1478. Promotion, demotion, or transfer of employees.
- 1479. Refusal to bargain.
- 1480. — In general.
- 1481. — Representative of employees.
- 1482. — Excuses or defenses.
 - (1). In general.
 - (2). Good faith in general.
 - (3). Doubt as to union's status.
- 1483. — Conduct constituting refusal.
 - (1). In general.
 - (2). Failure to provide information.
 - (3). Sham or surface bargaining.
 - (4). Particular subjects of bargaining.
- 1484. Refusal to sign agreement.
- 1485. Seniority discrimination.
- 1486. Shutdowns and lockouts.
- 1487. Unilateral changes in wages or conditions of employment.
- 1488. — In general.
- 1489. — Impasse in general.
- 1490. — Particular changes.
 - (1). In general.
 - (2). Wages in general.
 - (3). Wage increases.
 - (4). Bonuses.
 - (5). Hours; shift changes.
 - (6). Benefits in general.
 - (7). Health benefits.
 - (8). Pensions.
 - (9). Vacations, holidays, and sick leave.

XII. LABOR RELATIONS.(Cont'd)

- (10). Unilateral layoffs and subcontracting.
- 1491. Responsibility for acts of supervisors and others.
- 1492. Liability of successor employers.
- 1493. Unfair practices of employees or labor organizations.
- 1494. — In general.
- 1495. — Particular practices in general.
- 1496. — Breach of fair representation duty.
- 1497. — Restraint or coercion of employees.
 - (1). In general.
 - (2). Particular practices.
- 1498. — Restraint or coercion of employers.
 - (1). In general.
 - (2). Selection of representatives.
- 1499. — Discrimination.
 - (1). In general.
 - (2). Causing employer discrimination against employees.
 - (3). Referral; hiring hall.
 - (4). Discharge.
- 1500. — Refusal to bargain.
- 1501. — Activities for prohibited objects in general.
- 1502. — Secondary activity.
 - (1). In general.
 - (2). Picketing.
 - (3). Boycotts in general.
 - (4). Refusal to handle goods; "hot cargo".
- 1503. — Recognitional or organizational activity.
- 1504. — Responsibility.
- 1505. Prevention and redress.

(H) ALTERNATIVE DISPUTE RESOLUTION.

1. IN GENERAL.

- 1506. In general.
- 1507. Constitutional and statutory provisions.
- 1508. — In general.
- 1509. — Purpose.
 - (1). In general.
 - (2). Carriers; Railway Labor Act.
- 1510. — Validity.

231H. LABOR AND EMPLOYMENT

XII. LABOR RELATIONS.(Cont'd)

- 1511. — Retroactive operation.
- 1512. What law governs.
- 1513. Preemption.
See also STATES I(B).
- 1514. — In general.
- 1515. — Carriers; Railway Labor Act.
- 1516. Applicability of general arbitration statutes.

2. MATTERS SUBJECT TO ARBITRATION.

- 1517. In general.
- 1518. Availability of judicial remedies.
- 1519. Arbitration favored; presumption of arbitrability.
- 1520. Interest or grievance arbitration.
- 1521. Public employment in general.
- 1522. Carriers; Railway Labor Act.
- 1523. — In general.
- 1524. — Major and minor disputes in general.
- 1525. Particular disputes.
- 1526. — In general.
- 1527. — Jurisdictional disputes; representation.
- 1528. — Work assignments.
- 1529. — Mergers; change in employer.
- 1530. — Working conditions; safety.
- 1531. — Wages and bonuses.
- 1532. — Pensions and other benefits.
- 1533. — Hours.
- 1534. — Classification and seniority rights.
- 1535. — Discrimination.
- 1536. — Discipline.
- 1537. — Discharge and layoff.
- 1538. — Contracting out work.
- 1539. — Concerted activities.
- 1540. Waiver and estoppel.

3. ARBITRATION AGREEMENTS.

- 1541. In general.
- 1542. Requisites and validity.
- 1543. Construction and operation.
- 1544. — In general.
- 1545. — Effect of no strike clause.
- 1546. — Commencement, duration, and termination.
 - (1). In general.

XII. LABOR RELATIONS.(Cont'd)

- (2). Expiration of collective bargaining agreement.
- 1547. — Parties; successor employers.
- 1548. — Interest arbitration.
- 1549. — Matters subject to arbitration under agreement.
 - (1). In general.
 - (2). Arbitration favored; presumption of arbitrability.
 - (3). Exclusion clauses.
 - (4). Arbitrability.
 - (5). Arbitration procedures in general.
 - (6). Time for proceedings.
 - (7). Particular disputes in general.
 - (8). Renewal, modification, or amendment of collective bargaining agreement.
 - (9). Termination of collective bargaining agreement.
 - (10). Working conditions; safety.
 - (11). Wages and bonuses.
 - (12). Pensions and other benefits.
 - (13). Hours.
 - (14). Vacation, holidays, and sick leave.
 - (15). Classification and seniority rights.
 - (16). Promotion, demotion, and transfer; work assignments.
 - (17). Discrimination.
 - (18). Discipline.
 - (19). Discharge and layoff.
 - (20). Contracting out work.
 - (21). Concerted activities.
- 1550. Waiver and estoppel.
- 1551. Modification or renewal.
- 1552. Enforcement of agreement to arbitrate.
- 1553. — In general.
- 1554. — Right to compel arbitration.
- 1555. — Conditions precedent.
- 1556. — Proceedings.
 - (1). In general.
 - (2). Jurisdiction and venue.
 - (3). Scope of inquiry; merits of controversy.
 - (4). Time for proceedings.
 - (5). Parties.
 - (6). Pleading.

231H. LABOR AND EMPLOYMENT

XII. LABOR RELATIONS.(Cont'd)

- (7). Evidence.
- (8). Hearing.
- (9). Findings.
- (10). Relief in general.
- (11). Costs and attorney fees.

4. PROCEEDINGS.

- 1557. In general.
- 1558. Preserving status quo pending proceedings.
- 1559. Grievance proceedings.
- 1560. — In general.
- 1561. — Preliminary procedures.
- 1562. — Disclosure; discovery.
- 1563. — Time for proceedings.
- 1564. — Parties.
- 1565. — Notice.
- 1566. — Evidence.
- 1567. — Hearing.
- 1568. — Determination.
- 1569. Arbitration proceedings in general.
- 1570. Time for proceedings.
- 1571. Stay pending arbitration.
- 1572. Stay of arbitration.
- 1573. Jurisdiction of boards or officers.
- 1574. — In general.
- 1575. — Railroad boards.
- 1576. Appointment and competency of arbitrators.
- 1577. Authority of arbitrators.
- 1578. — In general.
- 1579. — Collective bargaining agreement as limiting authority.
- 1580. — Interpretation of collective bargaining agreement in general.
- 1581. Notice.
- 1582. Hearing.
- 1583. Matters considered; scope of inquiry.
- 1584. Evidence.
- 1585. — In general.
- 1586. — Presumptions and burden of proof.
- 1587. — Admissibility.
- 1588. — Weight and sufficiency.
- 1589. Findings.
- 1590. Award.
- 1591. — In general.

XII. LABOR RELATIONS.(Cont'd)

- 1592. — Conformity to collective bargaining agreement.
- 1593. — Conformity to submission.
- 1594. — Completeness.
- 1595. — Particular awards.
 - (1). In general.
 - (2). Working conditions; safety.
 - (3). Wages and bonuses.
 - (4). Pensions and other benefits.
 - (5). Hours.
 - (6). Classification and seniority rights.
 - (7). Discrimination.
 - (8). Discipline.
 - (9). Hiring, promotion, demotion, and transfer; work assignments.
 - (10). Discharge.
 - (11). Layoff.
 - (12). Reinstatement.
 - (13). Contracting out work.
 - (14). Concerted activities.
 - (15). Damages; back pay.
 - (16). Costs and attorney fees.
- 1596. Conclusiveness of award.
- 1597. — In general.
- 1598. — Persons concluded.
- 1599. — Matters concluded.
- 1600. Reconsideration, modification, or clarification.

5. ADMINISTRATIVE REVIEW.

- 1600.1. In general.
- 1600.2. Decisions reviewable.
- 1600.3. Persons entitled to seek review; parties; standing.
- 1600.4. Time for review.
- 1600.5. Petition or other application for review.
- 1600.6. Presentation and preservation of issues for review; record.
- 1600.7. Proceedings on review; hearing.
- 1600.8. Scope of review.
- 1600.9. — In general.
- 1600.10. — Theory or grounds relied on below.
- 1600.11. — Standard of review.
- 1600.12. Harmless, prejudicial, and reversible error.

231H. LABOR AND EMPLOYMENT

XII. LABOR RELATIONS.(Cont'd)

- 1600.13. Determination and disposition on review.
- 1600.14. Reopening and reconsideration.
- 1600.15. Further administrative review.
- 1600.16. Costs and fees.

6. JUDICIAL REVIEW AND ENFORCEMENT.

- 1601. In general.
- 1602. Railroads and other carriers in general.
- 1603. Decisions reviewable or enforceable.
- 1604. — In general.
- 1605. — Finality; ripeness.
- 1606. — Carriers; Railway Labor Act.
- 1607. Grounds for impeachment or enforcement.
- 1608. — In general.
- 1609. — Public policy.
 - (1). In general.
 - (2). Particular decisions.
- 1610. — Fraud.
 - (1). In general.
 - (2). Particular decisions.
- 1611. — Breach of duty of fair representation.
 - (1). In general.
 - (2). Particular decisions.
- 1612. Nature and form of proceeding.
- 1613. Jurisdiction and venue.
- 1614. Time for proceedings.
- 1615. Right to review and parties.
- 1616. Presentation of objections in original proceeding.
- 1617. Record.
- 1618. Scope of inquiry.
- 1619. — In general.
- 1620. — Deference in general.
- 1621. — Merits of award.
- 1622. — Presumptions and burden of proof.
- 1623. — Interpretation of collective bargaining agreement.
 - (1). In general.
 - (2). Particular provisions.
- 1624. — Findings of fact.
 - (1). In general.
 - (2). Particular findings.
- 1625. — Carriers; Railway Labor Act.
- 1626. Harmless error.

XII. LABOR RELATIONS.(Cont'd)

- 1627. Determination.
- 1628. — In general.
- 1629. — Remand.
- 1630. Further review.
- 1631. Costs and attorney fees.

(I) LABOR RELATIONS BOARDS AND PROCEEDINGS.

1. IN GENERAL.

- 1650. In general.
- 1651. Constitutional and statutory provisions.
- 1652. — In general.
- 1653. — Purpose.
- 1654. — Validity.
- 1655. — Retroactive operation.
- 1656. What law governs.
- 1657. Preemption.
See also STATES I(B).
- 1658. Powers and functions of boards.
- 1659. — In general.
- 1660. — Discretion in general.
- 1661. — Collective bargaining; contracts.
- 1662. — Disputes and concerted activities.
- 1663. — Remedies.
- 1664. — Effect of agreement or other litigation.
- 1665. Jurisdiction in general.
- 1666. — In general.
- 1667. — Discretion; declining jurisdiction.
- 1668. — Interstate commerce.
- 1669. Exclusive, concurrent, and conflicting jurisdiction.
- 1670. — In general.
- 1671. — Particular disputes in general.
- 1672. — Collective bargaining in general.
- 1673. — Violence and criminal activity in general.
- 1674. — Torts in general.
- 1675. — Unfair labor practice claims in general.
- 1676. — Practices of employer.
 - (1). In general.
 - (2). Discrimination.
 - (3). Discharge or layoff; reinstatement.
 - (4). Refusal to bargain.
- 1677. — Practices of employees and labor organizations.

231H. LABOR AND EMPLOYMENT

XII. LABOR RELATIONS.(Cont'd)

- (1). In general.
- (2). Internal affairs of labor organizations.
- (3). Fair representation.
- (4). Concerted activities in general.
- (5). Picketing.
- (6). Strikes.
- (7). Secondary activities.
- 1678. — Grievances and arbitration.
 - (1). In general.
 - (2). Particular disputes.
- 1679. Conditions precedent.
- 1680. Rules and regulations in general.
- 1681. Procedure in general.
- 1682. Discovery.
- 1683. Joinder or consolidation of proceedings.
- 1684. Time for proceedings, limitations, and laches.
- 1685. — In general.
- 1686. — Computation of limitation period in general.
- 1687. — Amended or reinstated charges; relation back.
- 1688. Charges and investigations.
- 1689. — In general.
- 1690. — Content and scope of charges.
- 1691. — Disposition of charges; determination.
- 1692. Interim relief.
- 1693. — In general.
- 1694. — Grounds.
- 1695. — Particular subjects of relief.
 - (1). In general.
 - (2). Activities of employer in general.
 - (3). Discharge; reinstatement.
 - (4). Activities of employees or labor organizations in general.
 - (5). Secondary activities.
- 1696. — Proceedings.
 - (1). In general.
 - (2). Evidence in general.
 - (3). Weight and sufficiency in general.
 - (4). Review.
- 1697. — Operation and effect.

2. PARTIES.

- 1700. In general.

XII. LABOR RELATIONS.(Cont'd)

- 1701. Persons filing charges.
- 1702. Intervention; joinder.

3. NOTICE AND APPEARANCE.

- 1703. Notice and appearance.

4. PLEADING.

- 1704. In general.
- 1705. Complaints.
- 1706. — In general.
- 1707. — Sufficiency.
- 1708. — Amendment.
- 1709. Answer.
- 1710. Issues, proof, and variance.

5. EVIDENCE IN GENERAL.

- 1711. In general.
- 1712. Presumptions and burden of proof.
- 1713. — In general.
- 1714. — Particular issues in general.
- 1715. — Unfair practices of employer.
 - (1). In general.
 - (2). Interference, restraint, or coercion in general.
 - (3). Intent or motive in general; pretext.
 - (4). Discrimination in general.
 - (5). Employment in general.
 - (6). Discharge in general.
 - (7). Motive for discharge; intent or pretext.
 - (8). Layoff.
 - (9). Reinstatement.
 - (10). Prohibiting solicitation or union activity.
 - (11). Refusal to bargain.
- 1716. — Unfair practices of employees or labor organizations.
- 1717. — Remedies.
- 1718. Admissibility of evidence.
- 1719. — In general.
- 1720. — Unfair practices in general.
- 1721. — Discharge or layoff, and reinstatement.
- 1722. — Domination or interference with choice of bargaining representative.
- 1723. — Hearsay and opinion evidence.

231H. LABOR AND EMPLOYMENT

6. WEIGHT AND SUFFICIENCY OF EVIDENCE.

- 1724. In general.
- 1725. Substantial evidence.
- 1726. Character of evidence in general; circumstantial evidence.
- 1727. Inferences from evidence.
- 1728. Particular facts or issues in general.
- 1729. Status of employer in general.
- 1730. Status of employee or labor organization in general.
- 1731. Concerted activities in general.
- 1732. Collective bargaining agreements; contracts.
- 1733. Grievances and arbitration.
- 1734. Unfair practices of employer in general.
- 1735. Interference, restraint, or coercion in general.
- 1736. Discrimination in general.
- 1737. Employment.
- 1738. Discipline in general.
- 1739. Discharge.
- 1740. — In general.
- 1741. — Motive or intent in general; pretext.
- 1742. — Particular grounds for discharge.
 - (1). In general.
 - (2). Work performance.
 - (3). Violation of work rules.
 - (4). Absenteeism; tardiness.
 - (5). Insubordination or disobedience.
- 1743. — Union activities.
 - (1). In general.
 - (2). Particular activities in general.
 - (3). Knowledge of activities.
- 1744. — Non-membership in union; closed or union shop contracts.
- 1745. — Striking employees.
- 1746. Layoff.
- 1747. Reinstatement.
- 1748. — In general.
- 1749. — Striking employees.
- 1750. Assistance to union.
- 1751. Domination of union.
- 1752. — In general.
- 1753. — Disestablishment of union.
- 1754. Espionage or surveillance in general.
- 1755. Interrogation of employees.
- 1756. Expression of employer's views.
- 1757. — In general.

XII. LABOR RELATIONS.(Cont'd)

- 1758. — Particular statements in general.
- 1759. — Promises of benefits.
- 1760. — Threats of reprisals.
- 1761. Pressure to join specific union.
- 1762. Prohibiting union solicitation or activity.
- 1763. Promotion, demotion, or transfer.
- 1764. Refusal to bargain collectively.
- 1765. — In general.
- 1766. — Union's majority status.
- 1767. — Conduct constituting refusal.
 - (1). In general.
 - (2). Failure to provide information.
 - (3). Sham or surface bargaining.
- 1768. Particular subjects of bargaining.
- 1769. Shutdowns and lockouts.
- 1770. Unilateral changes in wages or conditions of employment.
- 1771. — In general.
- 1772. — Wages.
- 1773. Acts of supervisory employees or others.
- 1774. Unfair practices of employees or labor organizations.
- 1775. — In general.
- 1776. — Particular practices in general.
- 1777. — Breach of fair representation duty.
- 1778. — Restraint or coercion of employees.
- 1779. — Restraint or coercion of employers.
- 1780. — Discrimination.
- 1781. — Activities for prohibited objects in general.
- 1782. — Secondary activities.
- 1783. — Recognition or organizational activity.
- 1784. — Responsibility.
- 1785. — Remedies.

7. WITNESSES.

- 1786. In general.
- 1787. Issuance of subpoenas in general.
- 1788. Subpoenas duces tecum.

231H. LABOR AND EMPLOYMENT

8. ABANDONMENT OR DISMISSAL OF PROCEEDINGS.

1790. Abandonment or dismissal of proceedings.

9. HEARING.

- 1792. In general.
- 1793. Necessity for or right to hearing.
- 1794. Administrative officers.
- 1795. Time for hearing; continuance.
- 1796. Scope of inquiry.
- 1797. Conduct of hearing in general.
- 1798. Reception of evidence.
- 1799. Questions of law and fact.
- 1800. Report and recommendations of administrative officer.
- 1801. — In general.
- 1802. — Operation and effect; conclusiveness.
- 1803. Findings.
- 1804. — In general.
- 1805. — Sufficiency of findings.
- 1806. Determination.
- 1807. — In general.
- 1808. — Past policies or position; precedent.
- 1809. Rehearing.
- 1810. Costs and attorney fees.

10. ORDERS.

- 1811. In general.
- 1812. Discretion of board.
- 1813. Relief awarded in general.
- 1814. Status quo; "make whole" relief.
- 1815. Restriction to issues, evidence, and findings.
- 1816. Affirmative action; penalties.
- 1817. Form and requisites.
- 1818. Moot or unnecessary orders.
- 1819. Parties to orders.
- 1820. Construction, operation, and effect in general.
- 1821. Particular relief.
- 1822. — In general.
- 1823. — Disclosure of information.
- 1824. — Cease and desist orders.
- 1825. — Restricting interference with or coercion of employees.
- 1826. — Bargaining orders.
 - (1). In general.

XII. LABOR RELATIONS.(Cont'd)

- (2). Grounds in general.
- (3). Particular cases.

- 1827. — Orders respecting employer-dominated organizations.
 - (1). In general.
 - (2). Disestablishment.
 - (3). Reimbursement of dues.
- 1828. — Reinstatement and back pay orders.
 - (1). In general.
 - (2). Nature and purpose of award; incidental rights.
 - (3). Availability of employment.
 - (4). Grounds and persons entitled in general.
 - (5). Discharge because of union activities.
 - (6). Striking employees.
 - (7). Persons obtaining other equivalent employment.
 - (8). Amount of back pay award in general.
 - (9). Back pay period.
 - (10). Other employment as affecting amount.
 - (11). Unemployment and other benefits.
- 1829. — Unfair labor practices of employees or labor organizations.
- 1830. Posting of notice of order.
- 1831. — In general.
- 1832. — Form of notice.
- 1833. Amendment or vacation of orders.

11. CONCLUSIVENESS OF DETERMINATION OR ORDER.

- 1834. Conclusiveness of determination or order; res judicata.

(J) JUDICIAL REVIEW AND ENFORCEMENT OF DECISIONS OF LABOR RELATIONS BOARDS.

1. REVIEW BY COURTS.

- 1841. In general.
- 1842. Constitutional and statutory provisions.
- 1843. — In general.
- 1844. — Purpose.
- 1845. — Validity.
- 1846. — Retroactive operation.

231H. LABOR AND EMPLOYMENT

XII. LABOR RELATIONS.(Cont'd)

- 1847. What law governs.
- 1848. Preemption.
See also STATES I(B).
- 1849. Nature and form of remedy.
- 1850. Jurisdiction.
- 1851. — In general.
- 1852. — Representation proceedings.
- 1853. Decisions reviewable.
- 1854. — In general.
- 1855. — Decision of general counsel.
- 1856. — Finality; ripeness.
- 1857. — Representation proceedings.
- 1858. Presentation of objections to board.
- 1859. — In general.
- 1860. — Particular objections.
- 1861. — Excuse for failure to object.
- 1862. Right of review and parties.
- 1863. Time for proceedings.
- 1864. Record.
- 1865. Petitions, briefs and assignments of error.
- 1866. Scope and extent of review in general.
- 1867. Trial de novo.
- 1868. Presumptions and burden of proof.
- 1869. Deference to board.
- 1870. — In general.
- 1871. — Representation proceedings.
- 1872. — Remedies.
- 1873. Discretion of board.
- 1874. — In general.
- 1875. — Representation proceedings.
- 1876. — Remedies.
- 1877. Questions of law or fact; findings.
- 1878. — In general.
- 1879. — Credibility of witnesses.
- 1880. — Substantial evidence.
- 1881. — Conflicting evidence.
- 1882. — Inferences or conclusions from evidence.
- 1883. — Particular findings.
 - (1). In general.
 - (2). Intent or motive.
 - (3). Unfair labor practices in general.
 - (4). Practices of employer in general.
 - (5). Discharge.
 - (6). Practices of employee or labor organization.
 - (7). Representation proceedings.

XII. LABOR RELATIONS.(Cont'd)

- (8). Remedies.
 - 1884. Harmless error.
 - 1885. Determination in general.
 - 1886. Modification.
 - 1887. Vacation or setting aside.
 - 1888. Remand to board.
 - 1889. — In general.
 - 1890. — Taking of additional evidence.
 - 1891. — Representation proceedings.
 - 1892. Further review.
 - 1893. Costs and attorney fees.
- #### 2. ENFORCEMENT BY COURTS.
- 1900. In general.
 - 1901. Constitutional and statutory provisions.
 - 1902. — In general.
 - 1903. — Purpose.
 - 1904. — Validity.
 - 1905. — Retroactive operation.
 - 1906. What law governs.
 - 1907. Preemption.
See also STATES I(B).
 - 1908. Jurisdiction and venue.
 - 1909. Decisions enforceable.
 - 1910. — In general.
 - 1911. — Moot decisions; changed circumstances.
 - 1912. Grounds for enforcement.
 - 1913. — In general.
 - 1914. — Cease and desist orders.
 - 1915. — Bargaining orders.
 - 1916. — Reinstatement and back pay orders.
 - 1917. Defenses.
 - 1918. Presentation of objections to board.
 - 1919. Proceedings in general.
 - 1920. Time for proceedings.
 - 1921. Parties.
 - 1922. Pleading.
 - 1923. Record.
 - 1924. Evidence.
 - 1925. — In general.
 - 1926. — Presumptions and burden of proof.
 - 1927. — Admissibility.
 - 1928. — Weight and sufficiency.
 - 1929. Dismissal or withdrawal of petition.
 - 1930. Hearing in general.

231H. LABOR AND EMPLOYMENT

XII. LABOR RELATIONS.(Cont'd)

- 1931. Scope of inquiry in general.
- 1932. Matters of discretion.
- 1933. Questions of law or fact, findings.
- 1934. — In general.
- 1935. — Credibility of witnesses.
- 1936. — Substantial evidence.
- 1937. — Conflicting evidence.
- 1938. — Inferences or conclusions from evidence.
- 1939. — Particular findings.
- 1940. Harmless error.
- 1941. Determination in general.
- 1942. Partial enforcement.
- 1943. Modification of order.
- 1944. Remand.
- 1945. — In general.
- 1946. — Taking of additional evidence.
- 1947. Judgment or order.
- 1948. Compliance with enforcement order.
- 1949. — In general.
- 1950. — Contempt.
 - (1). In general.
 - (2). Proceedings.
 - (3). Punishment.
- 1951. Review.
- 1952. Costs and attorney fees.

(K) CIVIL LIABILITIES.

- 1960. In general.
- 1961. Constitutional and statutory provisions.
- 1962. — In general.
- 1963. — Purpose.
- 1964. — Validity.
- 1965. — Retroactive operation.
- 1966. What law governs.
- 1967. Preemption.
See also STATES I(B).
- 1968. Labor organizations in general.
- 1969. Acts of officers or agents in general; ratification.
- 1970. Persons liable; successor liability.
- 1971. Liability of members and officers.
- 1972. Disputes and concerted activities.
- 1973. Inducing breach of contract.
- 1974. Interference with employment in general.
- 1975. Procuring discharge.

XII. LABOR RELATIONS.(Cont'd)

- 1976. Actions by or against labor organizations or members in general.
- 1977. — In general.
- 1978. — Capacity to sue and be sued.
- 1979. — Exhaustion of remedies.
- 1980. — Jurisdiction and venue.
- 1981. — Time to sue, limitations, and laches.

See also LIMITATION OF ACTIONS.

- 1982. — Parties; standing.
- 1983. — Representative or class actions.
- 1984. — Process and appearance.
- 1985. — Pleading.
- 1986. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 1987. — Trial.
- 1988. — Damages.
- 1989. — Judgment and execution.
- 1990. — Costs and attorney fees.
- 1991. Liability of employers or employers' organizations in general.
- 1992. Blacklisting.
- 1993. Service letter or statement of cause of discharge.
- 1994. Actions against employers or employers' organizations in general.
- 1995. — In general.
- 1996. — Exhaustion of remedies.
- 1997. — Jurisdiction and venue.
- 1998. — Time to sue, limitations, and laches.

See also LIMITATION OF ACTIONS.

- 1999. — Parties; standing.
- 2000. — Representative or class actions.
- 2001. — Pleading.
- 2002. — Evidence.
- 2003. — Trial.
- 2004. — Damages.
- 2005. — Judgment and execution.
- 2006. — Costs and attorney fees.

(L) INJUNCTION.

1. IN GENERAL.

- 2010. In general.

231H. LABOR AND EMPLOYMENT

XII. LABOR RELATIONS.(Cont'd)

- 2011. What law governs.
- 2012. Constitutional and statutory provisions.
- 2013. — In general.
- 2014. — Purpose.
- 2015. — Validity.
- 2016. — Construction and operation in general.
- 2017. — Statutes as substantive or procedural.
- 2018. Effect of other statutes.
- 2019. Retroactive application.
- 2020. Preemption.
See also STATES I(B).
- 2021. Nature and grounds of relief in general.
- 2022. Mandatory injunction.
- 2023. Other remedies or relief.
- 2024. Defenses or objections to relief.
- 2025. Conditions precedent in general; forfeiture of right to relief.
- 2026. Injunction ineffectual or not beneficial.
- 2027. Subjects of protection or relief in general.
- 2028. Internal affairs of labor organizations.
- 2029. Collective bargaining.
- 2030. Contracts.
- 2031. Contracts for closed or union shop.
- 2032. Enjoining enforcement of contracts.
- 2033. Unfair practices and unfair practice proceedings.
- 2034. Mediation, conciliation, and arbitration; attempt to settle dispute.
- 2035. Representation; proceedings.
- 2036. Courts affected.

2. DISPUTES AND CONCERTED ACTIVITIES.

- 2037. In general.
- 2038. Nature of dispute and purpose of activity.
- 2039. Existence of strike or lockout.
- 2040. Termination of employment or dispute.
- 2041. Particular disputes or purposes in general.
- 2042. Contract violations.
- 2043. Disputes as to unionization and closed shop.
- 2044. Employment or discharge.
- 2045. Race disputes.
- 2046. Unlawful purpose in general.
- 2047. Injury to or interference with business.

XII. LABOR RELATIONS.(Cont'd)

- 2048. Anti-trust law violations.
- 2049. Terms or conditions of employment.
- 2050. Wages, hours, and working conditions.
- 2051. Unwarranted demands.
- 2052. Publicity.
- 2053. Signs and banners; false and defamatory statements.
- 2054. Interference with employment.
- 2055. Inducing breach of contract.
- 2056. Refusal of or withdrawal from employment.
- 2057. Strikes and lockouts.
- 2058. Picketing.
- 2059. — In general.
- 2060. — Mode of picketing in general.
- 2061. — Place of picketing.
- 2062. Boycott of products.
- 2063. Unlawful acts in general.
- 2064. Injury to property.
- 2065. Obstructing access or seizure of property.
- 2066. Fraud.
- 2067. Inadequacy of police protection.
- 2068. Intimidation.
- 2069. Violence.
- 2070. Conditions precedent in general; forfeiture of right to relief.

3. PERSONS CONCERNED.

- 2071. In general.
- 2072. Employer-employee relationship.
- 2073. Small or owner-operated business.
- 2074. Charitable, educational, and nonprofit enterprises.
- 2075. Secondary pressures in general.
- 2076. Activity against persons other than employer in general.
- 2077. Activity by persons other than employees in general.
- 2078. Absence of dispute between employer and employees.
- 2079. Nature of dispute and purpose of activity.
- 2080. Boycott of products.
- 2081. Unionization and closed shop.
- 2082. Rival unions; jurisdictional disputes.

231H. LABOR AND EMPLOYMENT

4. PUBLIC EMPLOYMENT.

2083. In general.

5. WRONGFUL INJUNCTION.

2084. In general.

6. PROCEEDINGS.

2085. In general.

2086. Jurisdiction and venue.

2087. Bond.

2088. Time for proceedings; limitations and laches.

2089. Parties.

2090. — In general.

2091. — Plaintiffs.

2092. — Defendants.

2093. — Representative or class actions.

2094. Intervention; joinder.

2095. Pleading in general.

2096. Complaint, petition or bill.

2097. — In general.

2098. — Subjects of relief in general.

2099. — Contracts.

2100. — Unfair practices.

2101. — Disputes and concerted activities in general.

2102. — Unlawful acts.

2103. — Conditions precedent to relief.

2104. Plea or answer and subsequent pleadings.

2105. Issues, proof and variance.

2106. Presumptions and burden of proof.

2107. Admissibility of evidence.

2108. Weight and sufficiency of evidence.

2109. — In general.

2110. — Unfair practices.

2111. — Disputes and concerted activities in general.

2112. — Unlawful acts in general.

2113. — Inadequacy of police protection.

2114. — Nature of dispute and purpose of activity.

2115. — Persons concerned; secondary pressures.

2116. Dismissal before hearing.

2117. Hearing and reference.

2118. Findings.

2119. Order, judgment, or decree.

7. PRELIMINARY AND INTERLOCUTORY INJUNCTIONS IN GENERAL.

2120. In general.

2121. Discretion of court.

2122. Restraining orders in general.

2123. Scope of inquiry and questions considered.

2124. Continuing, modifying, vacating, or dissolving.

2125. — In general.

2126. — Grounds.

2127. — Motions.

2128. Order, judgment, or decree.

8. PERMANENT INJUNCTION IN GENERAL.

2129. Nature and scope of relief in general.

2130. Persons who may be restrained.

2131. Damages.

2132. Writ, order, or decree.

2133. — In general.

2134. — Form and requisites.

2135. — Vacating or modifying.

2136. — Operation and effect.

9. VIOLATION AND ENFORCEMENT; CONTEMPT.

2137. In general.

2138. Writ or mandate violated.

2139. Conduct constituting violation.

2140. — In general.

2141. — Concerted activities in general.

2142. — Violence; intimidation and threats.

2143. Excuse and justification.

2144. Persons involved.

2145. — In general.

2146. — Service or notice of injunction.

2147. Power to punish.

2148. Proceedings in general.

2149. Nature and form of proceeding.

2150. Venue.

2151. Pleadings and affidavits.

2152. Evidence in general.

2153. Weight and sufficiency of evidence.

2154. — In general.

2155. — Picketing.

2156. — Violence; unlawful acts.

2157. — Knowledge or notice of injunction.

2158. Trial or hearing.

2159. Judgment.

231H. LABOR AND EMPLOYMENT

XII. LABOR RELATIONS.(Cont'd)

- 2160. Punishment.
- 2161. — In general.
- 2162. — Fine.

10. REVIEW.

- 2163. In general.

11. COSTS AND ATTORNEY FEES.

- 2164. In general.

XIII. WAGES AND HOURS.

Contractual provisions as to wages, see IV. Collective bargaining agreement provisions as to wages and hours, see XIII(E).

(A) IN GENERAL.

- 2170. In general.
- 2171. Constitutional and statutory provisions.
- 2172. — In general.
- 2173. — Purpose.
 - (1). In general.
 - (2). Payment of wages.
- 2174. — Validity.
 - (1). In general.
 - (2). Payment of wages.
- 2175. — Retroactive operation.
- 2176. What law governs.
- 2177. Preemption.
See also STATES I(B).
- 2178. Payment of wages in general.
- 2179. Time of payment.
- 2180. — In general.
- 2181. — What are wages.
- 2182. — Payment on termination of employment.
- 2183. — Demand for payment.
- 2184. Medium of payment.
- 2185. Basis and measure of compensation.
- 2186. Deduction and forfeiture.
- 2187. — In general.
- 2188. — Union dues.
- 2189. — Kickbacks.
- 2190. Tipping.
- 2191. Administrative powers and proceedings.
- 2192. Actions.
- 2193. — In general.
- 2194. — Conditions precedent.
- 2195. — Defenses.

XIII. WAGES AND HOURS.(Cont'd)

- 2196. — Jurisdiction and venue.
 - 2197. — Time to sue and limitations.
See also LIMITATION OF ACTIONS.
 - 2198. — Parties; standing.
 - 2199. — Pleading.
 - 2200. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
 - 2201. — Trial.
 - 2202. — Damages.
 - (1). In general.
 - (2). Exemplary damages.
 - (3). Double or treble damages; liquidated damages.
 - 2203. — Penalties.
 - (1). In general.
 - (2). Amount of penalties.
 - 2204. — Costs and attorney fees.
- #### (B) MINIMUM WAGES AND OVERTIME PAY.
- ##### 1. IN GENERAL.
- 2210. In general.
 - 2211. Power to regulate.
 - 2212. — In general.
 - 2213. — Public works or employment.
 - 2214. — Women and minors.
 - 2215. Constitutional and statutory provisions.
 - 2216. — In general.
 - 2217. — Purpose.
 - (1). In general.
 - (2). Fair Labor Standards Act.
 - (3). Portal-to-Portal Act.
 - 2218. — Validity.
 - (1). In general.
 - (2). Federal statutes in general.
 - (3). State statutes in general.
 - (4). Persons and employments regulated.
 - (5). Newspapers.
 - (6). Public works and employment.
 - (7). Carriers.
 - (8). Women and minors.
 - (9). Amount and form of wages.
 - (10). Portal-to-portal pay.
 - (11). Actions and injunctions.

231H. LABOR AND EMPLOYMENT

XIII. WAGES AND HOURS.(Cont'd)

- 2219. — Retroactive operation.
- 2220. — Construction.
 - (1). In general.
 - (2). Strict or liberal construction.
- 2221. What law governs.
- 2222. Preemption.
See also STATES I(B).
- 2223. Municipal or county ordinances.

**2. PERSONS AND EMPLOYMENTS
WITHIN REGULATIONS.**

- 2224. In general.
- 2225. Employment relationship.
- 2226. Employers included.
- 2227. — In general.
- 2228. — Joint or multiple employers.
- 2229. — Suffering or permitting to work.
- 2230. — Supervisory personnel.
- 2231. Employees included.
- 2232. — In general.
- 2233. — Particular employees.
- 2234. Independent contractors.
- 2235. — In general.
- 2236. — Persons in particular employ-
ments.
- 2237. Homeworkers and pieceworkers.
- 2238. Employments included in general.
- 2239. Public employment; public works.
- 2240. — In general.
- 2241. — Municipal employment in gener-
al.
- 2242. — Police officers and firefighters.
- 2243. — Public contracts, work under.
- 2244. Inmates.
- 2245. Women and minors.
- 2246. Learners and apprentices.
- 2247. Disabled workers.

3. EXEMPTIONS.

- 2250. In general.
- 2251. Strict or liberal construction of exemp-
tions.
- 2252. Particular exemptions in general.
- 2252.5. Highly compensated employees.
- 2253. Executive and administrative employ-
ees.
- 2254. — In general.
- 2255. — Definitions and tests of status in
general.

XIII. WAGES AND HOURS.(Cont'd)

- 2256. — Wage administrator's regulations
in general.
- 2257. — Particular employments.
- 2258. — Accountants, bookkeepers, cash-
iers, and other office workers.
- 2259. — Engineers.
- 2260. — Expeditors and inspectors.
- 2261. — Forepersons in general.
- 2262. — Managers, supervisors, etc.
- 2263. — Shipping clerks.
- 2264. — Salaried status.
 - (1). In general.
 - (2). Deductions from pay.
 - (3). Window of correction.
- 2264.5. — Highly compensated employees.
- 2265. Professional employees.
- 2266. — In general.
- 2267. — Particular employees.
- 2268. Outside salespersons.
- 2269. Retail or service establishments.
- 2270. Seamen.
- 2271. Fish or seafood; employment related
to.
- 2272. Agricultural employees.
- 2273. — In general.
- 2274. — Particular operations and com-
modities in general.
- 2275. — Nurseries, greenhouses, and flow-
er gardens.
- 2276. — Sugar.
- 2277. Processing agricultural products.
- 2278. — In general.
- 2279. — Particular products and opera-
tions in general.
- 2280. — Dairy products.
- 2281. — Fruits and vegetables.
- 2282. — Sugar production.
- 2283. — Area of production.
- 2284. Domestic or companionship services.
- 2285. Carriers.
- 2286. — In general.
- 2287. — Particular employees in general.
- 2288. — Air carriers' employees.
- 2289. — Railroad employees.
- 2290. — Motor carriers' employees.
 - (1). In general.
 - (2). Duties affecting safety or opera-
tion.

231H. LABOR AND EMPLOYMENT

XIII. WAGES AND HOURS.(Cont'd)

- (3). Particular employees in general.
- (4). Drivers.
- (5). Loaders.
- (6). Mechanics.
- (7). Private and contract carriers.
- 2291. Seasonal, periodic, or intermittent employment.
- 2292. Governmental bodies.
 - (1). In general.
 - (2). Particular employments.
 - (3). Contractors performing government work.
- 4. OPERATION AND EFFECT OF REGULATIONS.
- 2295. In general.
- 2296. Violation of regulations and liability in general.
- 2297. Contracts.
 - Contracts for compensation generally, see IV.*
- 2298. — In general.
- 2299. — Incorporation of regulations.
- 2300. — Collective bargaining agreements.
 - Collective bargaining agreements generally, see XII(E).*
- 2301. — Compliance with or violation of regulations.
- 2302. — Effect of violation.
- 2303. Minimum wages.
- 2304. Prevailing wages.
- 2305. Overtime pay in general.
- 2306. Computation of wage and overtime rates in general.
- 2307. Regular rate.
- 2308. Piecework.
- 2309. Bonus in general.
- 2310. Differential for night or holiday work.
- 2311. Working time.
- 2312. — In general.
- 2313. — Work week.
- 2314. — Time not actually at work in general.
- 2315. — Portal-to-portal time in general.
- 2316. — Preliminary or postliminary activities in general.
- 2317. — Waiting, resting, or sleeping time.
- 2318. — Meal or break periods.
- 2318.5. — Donning and doffing; changing apparel and gear.
- 2319. — Travel time.
- 2320. — On-call time.

XIII. WAGES AND HOURS.(Cont'd)

- 2321. Time and mode of payment.
- 2322. — In general.
- 2323. — Deductions from wages in general.
- 2324. — Board, lodging or other facilities furnished.
- 2325. — Tips.
- 2326. Increase or reduction of wages.
- 2327. Waiver and estoppel.
- 2328. Accord and satisfaction.
- 2329. Compromise and settlement.
- 2330. Release.
- 2331. Records and reports.
- 2332. — In general.
- 2333. — Duty to keep records.
- 2334. — Requisites of records.
- 2335. — Inspection of records.
- 5. ADMINISTRATIVE POWERS AND PROCEEDINGS.
- 2336. In general.
- 2337. Administrative boards and officers.
- 2338. Rules and regulations.
- 2339. Investigations in general.
- 2340. Subpoenas.
- 2341. — In general.
- 2342. — Enforcement.
- 2343. Industry committees.
- 2344. Proceedings.
- 2345. — In general.
- 2346. — Notice.
- 2347. — Evidence.
- 2348. — Hearing.
- 2349. — Findings.
- 2350. — Orders.
 - (1). In general.
 - (2). Requisites and validity.
 - (3). Construction and operation.
 - (4). Modification.
- 2351. Administrative review.
- 2352. Judicial review and enforcement.
- 2353. — In general.
- 2354. — Decisions reviewable.
- 2355. — Proceedings for review.
- 2356. — Presentation and reservation of grounds for review.
- 2357. — Scope of review.
- 2358. — Determination.
- 2359. — Further review.

231H. LABOR AND EMPLOYMENT

6. ACTIONS.

- 2361. In general.
- 2362. Nature and form of remedy.
- 2363. Conditions precedent.
- 2364. Defenses.
- 2365. — In general.
- 2366. — Reliance on administrative ruling or policy.
- 2367. Jurisdiction and venue.
- 2368. Time to sue and limitations.
See also LIMITATION OF ACTIONS.
- 2369. — In general.
- 2370. — Limitations applicable in general.
- 2371. — Willful violations.
- 2372. Parties; standing.
- 2373. Actions on behalf of others in general.
- 2374. — In general.
- 2375. — Employees similarly situated.
- 2376. — Authority to sue.
- 2377. — Class actions.
- 2377.5. — Notice and opting-in.
- 2378. Pleading.
- 2379. — In general.
- 2380. — Complaint, petition, or declaration.
 - (1). In general.
 - (2). Exemptions.
 - (3). Overtime claim in general.
 - (4). Portal-to-portal pay.
 - (5). Actions on behalf of others.
- 2381. — Plea or answer.
- 2382. — Issues, proof, and variance.
- 2383. Evidence.
- 2384. — In general.
- 2385. — Presumptions and burden of proof.
 - (1). In general.
 - (2). Overtime in general.
 - (3). Working time.
 - (4). Persons and employments within regulations in general.
 - (5). Exemptions.
 - (6). — In general.
 - (7). — Executive, administrative, or professional employees.
 - (8). — Other particular exemptions.
- 2386. — Admissibility.
- 2387. — Weight and sufficiency.
 - (1). In general.

XIII. WAGES AND HOURS.(Cont'd)

- (2). Minimum wages.
 - (3). Prevailing wages.
 - (4). Overtime in general.
 - (5). Computation of overtime rate.
 - (6). Working time.
 - (7). Persons and employments within regulations in general.
 - (8). Exemptions.
 - (9). — In general.
 - (10). — Executive, administrative, or professional employees.
 - (11). Defenses.
 - 2388. Damages and amount of recovery.
 - 2389. — In general.
 - 2390. — Liquidated damages.
 - (1). In general.
 - (2). Nature and purpose in general.
 - (3). Mandatory nature.
 - (4). Good faith; reasonable grounds.
 - (5). Payment or tender of wages due.
 - 2391. — Computation.
 - 2392. — Interest.
 - 2393. — Amount awarded.
 - 2394. — Evidence.
 - 2395. Trial.
 - 2396. — In general.
 - 2397. — Questions of law or fact.
 - (1). In general.
 - (2). Exemptions.
 - (3). Working time.
 - 2398. — Instructions.
 - 2399. — Verdict and findings.
 - 2400. Judgment.
 - 2401. Costs and attorney fees.
 - 2402. — In general.
 - 2403. — Attorney fees in general.
 - 2404. — Defenses.
 - 2405. — Amount.
 - 2406. — Proceedings.
 - 2407. Penalties.
 - 2408. — In general.
 - 2409. — Actions for penalties in general.
 - 2410. — Amount of penalties.
- ### 7. INJUNCTIONS.
- 2413. In general.
 - 2414. Substantial or incidental nature of injury.

231H. LABOR AND EMPLOYMENT

XIII. WAGES AND HOURS.(Cont'd)

- 2415. Discretion of court.
- 2416. Existence of other remedy.
- 2417. Grounds and subjects of relief.
- 2418. — In general.
- 2419. — Intention to violate.
- 2420. — Prevailing wages.
- 2421. — Overtime pay.
- 2422. — Failure to keep records.
- 2423. — Injunction against enforcement of regulations.
- 2424. Defenses.
- 2425. Cessation of violation.
- 2426. Proceedings.
- 2427. — In general.
- 2428. — Jurisdiction and venue.
- 2429. — Parties; standing.
- 2430. — Persons who may be restrained.
- 2431. — Pleading.
- 2432. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 2433. Trial.
- 2434. Order or judgment.
- 2435. Preliminary and interlocutory injunctions.
- 2436. Permanent injunction or other relief.
- 2437. — In general.
- 2438. — Scope of injunction.
- 2439. — Alternative or additional relief.
- 2440. Costs and attorney fees.
- 2441. Operation and effect of injunction.
- 2442. Violation and enforcement.
- 2443. — In general.
- 2444. — Contempt.

(C) EQUAL PAY.

- 2450. In general.
- 2451. Constitutional and statutory provisions.
- 2452. — In general.
- 2453. — Purpose.
- 2454. — Validity.
- 2455. — Retroactive operation.
- 2456. What law governs.
- 2457. Preemption.

See also STATES I(B).

XIII. WAGES AND HOURS.(Cont'd)

- 2458. Persons and employments within regulations.
- 2459. Exemptions.
- 2460. Discrimination in general.
- 2461. — In general.
- 2462. — Disparity in pay.
- 2463. — Equal work; skill, effort, and responsibility.
- 2465. Exception or justification.
- 2466. — In general.
- 2467. — Seniority system; job experience.
- 2468. — Merit system; job rating system.
- 2469. — Measuring earnings by quantity or quality of production.
- 2470. — Shift differential.
- 2471. Administrative powers and proceedings in general.
- 2472. Actions.
- 2473. — In general.
- 2474. — Nature and form of remedy.
- 2475. — Conditions precedent.
- 2476. — Defenses.
- 2477. — Jurisdiction and venue.
- 2478. — Time to sue and limitations.
 - See also LIMITATION OF ACTIONS.*
 - (1). In general.
 - (2). Limitations applicable in general.
 - (3). Willful violations.
- 2479. — Parties; standing.
- 2480. — Pleading.
- 2481. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
 - (5). — In general.
 - (6). — Disparity in pay.
 - (7). — Equal work; skill, effort, and responsibility.
 - (8). — Exception or justification; seniority or merit system.
- 2482. — Damages and amount of recovery.
 - (1). In general.
 - (2). Liquidated damages.
 - (3). Interest.
 - (4). Amount awarded.

231H. LABOR AND EMPLOYMENT

XIII. WAGES AND HOURS.(Cont'd)

- 2483. — Trial.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Instructions.
 - (4). Verdict and findings.
- 2484. — Judgment.
- 2485. — Costs and attorney fees.
 - (1). In general.
 - (2). Attorney fees.
- 2486. — Injunctions.
 - (1). In general.
 - (2). Proceedings for injunction.
 - (3). Violation and enforcement.
- (D) HOURS OF SERVICE.**
- 2490. In general.
- 2491. Power to regulate.
- 2492. Constitutional and statutory provisions.
- 2493. — In general.
- 2494. — Purpose.
- 2495. — Validity.
 - (1). In general.
 - (2). Particular employees in general.
 - (3). Women.
 - (4). Minors.
 - (5). Public employees.
- 2496. — Retroactive operation.
- 2497. — Construction in general.
- 2498. What law governs.
- 2499. Preemption.
See also STATES I(B).
- 2500. Employments subject to regulations.
- 2501. Persons subject to regulations.
- 2502. Exemptions.
- 2503. Day of rest.
- 2504. Operation and effect of regulations.
- 2505. — In general.
- 2506. — Police officers and firefighters.
- 2507. — Railroad employees.
- 2508. — Motor carriers' employees.
- 2509. — Commencement and duration of service.
- 2510. — Continuity of service.
- 2511. Matters excusing violations.
- 2512. — In general.
- 2513. — Emergencies.
- 2514. — Unavoidable accident or casualty.
- 2515. — Mistake or lack of knowledge.

XIII. WAGES AND HOURS.(Cont'd)

- 2516. Contracts covering hours of services.
- 2517. Persons liable for violations.
- 2518. Records and reports.
- 2519. Administrative powers and proceedings in general.
- 2520. Actions and injunctions.
- (E) OFFENSES AND PROSECUTIONS.**
- 2521. In general.
- 2522. Constitutional and statutory provisions.
- 2523. Preemption.
See also STATES I(B).
- 2524. Offenses.
- 2525. — In general.
- 2526. — Failure to pay required wages.
- 2527. — False or inadequate records.
- 2528. — Kickbacks.
- 2529. — Computation and payment of wages.
- 2530. — Persons liable.
- 2531. — Defenses.
- 2532. Prosecutions.
- 2533. — In general.
- 2534. — Indictment, information, or complaint.
- 2535. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 2536. — Trial.
- 2537. — Sentence and punishment.

XIV. SAFETY AND HEALTH REGULATION IN GENERAL.

See XV for mine safety. See XVII for tort liability.

- 2551. In general.
- 2552. What law governs.
- 2553. Constitutional and statutory provisions.
- 2554. — In general.
- 2555. — Purpose.
- 2556. — Validity.
- 2557. — Retroactive application.
- 2558. Concurrent or conflicting statutes or regulations.
- 2559. — In general.
- 2560. — Federal preemption.
See also STATES I(B).

231H. LABOR AND EMPLOYMENT

XIV. SAFETY AND HEALTH REGULATION IN GENERAL.(Cont'd)

- 2561. — State preemption of local laws and actions.
See also STATES I(B).
- 2562. Employers and industries regulated in general.
- 2563. — In general.
- 2564. — Agriculture.
- 2565. — Construction sites.
- 2566. — Home work.
- 2567. — Manufacturing.
- 2568. — Railroads.
- 2569. — Seamen and wharves; vessels.
- 2570. Persons protected.
- 2571. Regulatory agencies.
- 2572. Regulations.
- 2573. — In general.
- 2574. — Notice.
- 2575. — Comment.
- 2576. — Delay.
- 2577. General duty.
- 2578. Industry standards.
- 2579. Technological feasibility.
- 2580. Economic feasibility.
- 2581. Exposure in general.
- 2582. Chemicals; fumes; vapors; gases.
- 2583. Dust and particulates.
- 2584. Personal safety devices, equipment or clothing.
- 2585. Noise.
- 2586. Machines and equipment; structures.
- 2587. — In general.
- 2588. — Safety guards.
- 2589. — Maintenance.
- 2590. — Guard rails.
- 2591. — Safety harnesses.
- 2592. — Safety nets.
- 2593. — Scaffolding.
- 2594. — Flooring.
- 2595. Ventilation.
- 2596. Trenches, ditches, etc.
- 2597. Building maintenance.
- 2598. Training; supervision; warnings.
- 2599. Sanitation.
- 2600. Inspections.
- 2601. Investigations.
- 2602. Records; reports.
- 2603. Right of action.

XIV. SAFETY AND HEALTH REGULATION IN GENERAL.(Cont'd)

- 2604. Penalties; enforcement.
- 2605. — In general.
- 2606. — Serious, willful or repeated violations.
- 2607. — Persons liable or responsible.
- 2608. — Particular violations.
 - (1). In general.
 - (2). Exposure.
 - (3). Machines and equipment; structures.
 - (4). Construction.
 - (5). Building maintenance.
- 2609. Procedure.
- 2610. — In general.
- 2611. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Weight and sufficiency.
- 2612. — Judicial review.
- 2613. Costs and attorney fees.

XV. MINES.

See XVII for tort liability.

(A) IN GENERAL.

- 2620. In general.
- 2621. What law governs.
- 2622. Constitutional and statutory provisions.
- 2623. — In general.
- 2624. — Purpose.
- 2625. — Validity.
- 2626. — Retroactive application.
- 2627. Concurrent or conflicting regulations.
- 2628. — In general.
- 2629. — Federal preemption.
See also STATES I(B).
- 2630. — State preemption.
See also STATES I(B).
- 2631. Employers and industries covered.
- 2632. Administrative review.
- 2633. Persons protected.
- 2634. Agencies.
- 2635. Regulations in general.
- 2636. — In general.
- 2637. — Notice.
- 2638. — Comment.
- 2639. — Delay.

231H. LABOR AND EMPLOYMENT

XV. MINES.(Cont'd)

- 2640. Industry standards.
- 2641. Technological feasibility.
- 2642. Economic feasibility.
- 2643. Duty in general.
- 2644. Exposure; in general.
- 2645. Chemicals; fumes; vapors; gases.
- 2646. Dust and particulates.
- 2647. Personal safety devices, equipment or clothing.
- 2648. Noise.
- 2649. Machines and equipment; structures.
- 2650. — In general.
- 2651. — Safety guards.
- 2652. — Maintenance.
- 2653. — Guard rails.
- 2654. — Safety harnesses.
- 2655. — Safety nets.
- 2656. — Scaffolding; ladders.
- 2657. — Temporary flooring.
- 2658. Trenches.
- 2659. Ventilation.
- 2660. Sanitation.
- 2661. Inspections.
- 2662. Training; supervision; warning.
- 2663. Investigations.
- 2664. Records; reports.
- 2665. Right of action.
- 2666. Penalties; enforcement.
- 2667. — In general.
- 2668. — Persons liable or responsible.
- 2669. — Serious, willful or repeated violations.
- 2670. — Particular violations.
 - (1). In general.
 - (2). Exposure.
 - (3). Machines and equipment; structures.
 - (4). Building maintenance.
- 2671. Procedure.
- 2672. — In general.
- 2673. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Weight and sufficiency.
- 2674. — Review.
- 2675. Costs and attorney fees.
- 2676. Radiation exposure.

(B) PNEUMOCONIOSIS; BLACK LUNG BENEFITS.

- 2680. In general.
- 2681. Eligibility.
- 2682. — In general.
- 2683. — Survivor benefits.
- 2684. Proceedings in general.
- 2685. Evidence.
- 2686. — In general.
- 2687. — Presumptions and burden of proof.
 - (1). In general.
 - (2). Irrebuttable presumption.
- 2688. — Weight and sufficiency.
 - (1). In general.
 - (2). X-ray evidence.
 - (3). Pulmonary function tests.
 - (4). Treating physician.
- 2689. Determination.
- 2690. — In general.
- 2691. — Conclusiveness.
- 2692. Amount.
- 2693. Payment.
- 2694. Rehearing.
- 2695. Administrative review.
- 2696. Modification.
- 2697. Judicial review.
- 2698. Costs and attorney fees.

XVI. AGRICULTURAL LABOR.

Issues specific to agricultural labor, see also XII. See XIII for wage and hour issues of general applicability.

- 2700. In general.
- 2701. Constitutional and statutory provisions.
- 2702. — In general.
- 2703. — Purpose.
- 2704. — Validity.
- 2705. — Retroactive application.
- 2706. What law governs.
- 2707. Preemption.
See also STATES I(B).
- 2708. Employees covered; agricultural, seasonal or migratory employment.
- 2709. — In general.
- 2710. — Incidental activities; cannery or processing work.
- 2711. — Nonfood production; forestry.
- 2712. Employers.
- 2713. — In general.
- 2714. — Exemptions.
- 2715. — Joint employers.

231H. LABOR AND EMPLOYMENT

XVI. AGRICULTURAL LABOR.(Cont'd)

- 2716. Labor contractors.
- 2717. — In general.
- 2718. — Who are contractors; exemptions.
 - (1). In general.
 - (2). Compensation or fees.
- 2719. Disclosure and record-keeping requirements.
- 2720. Certification; duty to inquire.
- 2721. Housing and working conditions.
- 2722. Liability for non-compliance; intent.
- 2723. — In general.
- 2724. — Persons liable.
- 2725. Regulatory agencies and officers.
- 2726. — In general.
- 2727. — Inspection and investigation.
- 2728. Proceedings.
- 2729. — In general.
- 2730. — Evidence.
- 2731. — Relief; penalties, damages and costs.

XVII. EMPLOYER'S LIABILITY TO EMPLOYEES.

(A) IN GENERAL.

1. NATURE AND SCOPE OF EMPLOYER'S DUTY.

- 2750. In general.
- 2751. Constitutional and statutory provisions.
- 2752. — In general.
- 2753. — Purpose.
- 2754. — Validity.
- 2755. — Retroactive operation.
- 2756. What law governs.
- 2757. Preemption.
See also STATES I(B).
- 2758. Elements of recovery.
- 2759. — In general.
- 2760. — Employer-employee relationship.
- 2761. — Negligence.
- 2762. — Compensable injury.
- 2763. Relationship between parties.
- 2764. — In general.
- 2765. — Independent contractors.
- 2766. — Volunteers.
- 2767. — Injuries to those acting under direction of defendant's employee.
- 2768. — Traffic arrangements and contracts between employers.

XVII. EMPLOYER'S LIABILITY TO EMPLOYEES.(Cont'd)

- 2769. — Scope of employment.
- 2770. — Commencement, suspension or termination of relation.
- 2771. Existence of duty on part of employer.
- 2772. — In general.
- 2773. — Common carriers.
- 2774. — Interstate commerce by railroad.
- 2775. — Special relationship between employer and employee.
 - (1). In general.
 - (2). Existence of relationship, and corresponding duty.
 - (3). Standard of care.
- 2776. Nature and scope of duty owed by employer.
- 2777. — In general.
- 2778. — What constitutes negligence by employer.
- 2779. Breach of duty.
- 2780. Proximate cause.
- 2781. — In general.
- 2782. — Foreseeability; remoteness.
- 2783. Nature of compensable injury.
- 2784. Liability as insurer; relationship to workers' compensation.
- 2785. Violation of statute as evidence of negligence.
- 2786. Willful injury by employer.
- 2787. Medical attendance on employee.
- 2788. Unlawful employment or services.
- 2789. Joint liability of employers and others.
- 2790. Contracts extending, limiting, or releasing liability.
- 2791. — In general.
- 2792. — Contracts entered prior to injury.
- 2793. — Contracts entered subsequent to injury.

2. ACTIONS IN GENERAL.

- 2800. In general.
- 2801. Nature and form of remedy.
- 2802. Constitutional and statutory provisions.
- 2803. Grounds and conditions precedent in general.
- 2804. Notice of injury.
- 2805. Jurisdiction and venue.
- 2806. Time to sue and limitations.
- 2807. Parties; standing.

231H. LABOR AND EMPLOYMENT

**XVII. EMPLOYER'S LIABILITY
TO EMPLOYEES.(Cont'd)**

- 2808. Pleading.
- 2812. Issues, proof, and variance.
- 2813. — In general.
- 2814. — Matters to be proved.
- 2815. — Issues raised by and evidence admissible under pleadings.
- 2816. — Variance between allegations and proof.
- 2817. Presumptions and burden of proof.
- 2818. Discovery.
- 2819. Admissibility of evidence.
- 2820. Weight and sufficiency of evidence.
- 2821. Damages.
- 2822. — In general.
- 2823. — Elements of compensation.
- 2824. — Amount awarded.
- 2825. — Exemplary damages.
- 2826. — Instructions.
- 2827. Conduct of trial.
- 2828. Questions of law or fact.
- 2829. Instructions.
- 2830. Verdict, findings, and judgment.

**(B) WORKING CONDITIONS AND METHODS
OF PERFORMING WORK.**

- 2831. In general.
- 2832. Nature and scope of duty owed by employer.
- 2833. Constitutional and statutory provisions.
- 2834. — In general.
- 2835. — Purpose.
- 2836. — Validity.
- 2837. — Retroactive operation.
- 2838. Employers covered by statutory provisions.
- 2839. Rules and orders as to performance of work.
- 2840. Sufficiency of workforce.
- 2841. Kind of equipment.
- 2842. — In general.
- 2843. — Newest, safest, and best equipment.
- 2844. — Uniform character of equipment.
- 2845. — Degree of care required in general.
- 2846. — Degree of care required in operation of railroads.

**XVII. EMPLOYER'S LIABILITY
TO EMPLOYEES.(Cont'd)**

- 2847. — Care required dependent on knowledge and experience of employee.
- 2848. Delegation of duty.
- 2849. Custom and usage.
- 2850. Equipment or places owned, controlled, or provided by third persons.
- 2851. — In general.
- 2852. — Locomotives and railroad cars.
- 2853. — Railroad tracks and roadbeds.
- 2854. — Obstructions or structures on, over, or near railroad tracks.
- 2855. Working conditions; defective equipment in general.
- 2856. Equipment and places inherently dangerous.
- 2857. Covering or guarding dangerous machinery or places.
- 2858. Inspection and testing.
- 2859. Knowledge by employer of defect or danger.
- 2860. Opportunity to remedy defects.
- 2861. Failure to repair or negligence in repairing defects.
- 2862. Locomotives and railroad cars.
- 2863. Railroad tracks and roadbeds.
- 2864. Obstructions or structures on, over, or near railroad tracks.
- 2865. Walkways and passages used in work.
- 2866. Buildings.
- 2867. Platforms, scaffolds, ladders, and supports.
- 2868. Derricks, elevators, hoistways, and shafts.
- 2869. Methods of performing work.
- 2870. — In general.
- 2871. — Employer's acquiescence in method or practice of work.
- 2872. — Inherently dangerous work.
- 2873. — Assignment of employees in general.
- 2874. — Operation of railroads.
- 2875. — Other particular operations.
- 2876. Acts in emergencies.
- 2877. Proximate cause.
- 2878. Pleading.
- 2879. Presumptions and burden of proof.
- 2880. Admissibility of evidence.

231H. LABOR AND EMPLOYMENT

**XVII. EMPLOYER'S LIABILITY
TO EMPLOYEES.(Cont'd)**

- 2881. Weight and sufficiency of evidence.
- 2882. Questions of law or fact.
- 2883. — In general.
- 2884. — Rules and orders.
- 2885. — Tools, equipment, and machinery.
- 2886. — Locomotives and railroad cars.
- 2887. — Railroad tracks and roadbeds.
- 2888. — Obstructions or structures on, over, or near railroad tracks.
- 2889. — Walkways and places for work.
- 2890. — Buildings.
- 2891. — Platforms, scaffolds, ladders, and supports.
- 2892. — Elevators, derricks, cranes, hoisting apparatus, and shafts.
- 2893. — Electrical apparatus and structures.
- 2894. — Inspections and testing.
- 2895. — Knowledge by employer of defect or danger.
- 2896. — Precautions against injury in general.
- 2897. Instructions.

(C) WARNINGS REGARDING WORK PERFORMED.

- 2900. In general.
- 2901. Duty to warn.
- 2902. Delegation of duty to warn.
- 2903. Employee's level of experience.
- 2904. Youthful employees.
- 2905. Dangers or defects known to employee.
- 2906. Obvious dangers.
- 2907. Dangers from extraneous sources.
- 2908. Particular operations.
- 2909. — In general.
- 2910. — Sufficiency and effect of warnings in general.
- 2911. — Operation of railroad.
- 2912. — Other particular operations.
- 2913. Acts in emergencies.
- 2914. Proximate cause.
- 2915. Pleading.
- 2916. Presumptions and burden of proof.
- 2917. Admissibility of evidence.
- 2918. Weight and sufficiency of evidence.
- 2919. Questions of law or fact.
- 2920. Instructions.

(D) FELLOW EMPLOYEES.

- 2921. In general.
- 2922. Supervision, hiring, and retention.
- 2923. Competency.
- 2924. Negligence as ground of liability.
- 2925. Statutory provisions limiting fellow servant doctrine.
- 2926. Nature of act and performance of duties of employer.
- 2927. Executives and other representatives of employer.
- 2928. Employees in different departments of business.
- 2929. Existence of relation of employer and employee in general.
- 2930. Employees of separate employers in same work.
- 2931. Fellow employee not on duty.
- 2932. Nature of common service.
- 2933. Concurrent negligence of employer and fellow employee.
- 2934. Willful acts and gross negligence of fellow employees.
- 2935. — In general.
- 2936. — Assaults.
- 2937. — Sexual misconduct.

Recovery for emotional distress arising from sexual misconduct, see DAMAGES.

- 2938. Pleading.
- 2939. Presumptions and burden of proof.
- 2940. Admissibility of evidence.
- 2941. Weight and sufficiency of evidence.
- 2942. Questions of law or fact.
- 2943. Instructions.

(E) RISKS ASSUMED BY EMPLOYEE.

- 2944. In general.
- 2945. Constitutional and statutory provisions.
- 2946. — In general.
- 2947. — Purpose.
- 2948. — Validity.
- 2949. — Retroactive operation.
- 2950. Applicability of assumption of risk; abrogation of doctrine.
- 2951. Reliance on care of employer.
- 2952. Dangers incident to nature of work.
- 2953. Working conditions.
- 2954. — In general.
- 2955. — Methods of performing work.
- 2956. — Tools, machinery, or equipment.

231H. LABOR AND EMPLOYMENT

**XVII. EMPLOYER'S LIABILITY
TO EMPLOYEES.(Cont'd)**

- 2957. — Places for work.
- 2958. Inadequate rules or direction of work.
- 2959. Sufficiency of workforce.
- 2960. Fellow employees.
- 2961. Dangers or defects known to employee.
- 2962. Inexperienced or youthful employee.
- 2963. Obvious dangers.
- 2964. Notice or complaint to employer.
- 2965. Promise by employer to remedy defect or remove danger.
- 2966. Disobedience of rules or orders.
- 2967. Compliance with commands or threats.
- 2968. Proximate cause.
- 2969. Risk outside scope of employment.
- 2970. Concurrent negligence of employer.
- 2971. Pleading.
- 2972. Presumptions and burden of proof.
- 2973. Admissibility of evidence.
- 2974. Weight and sufficiency of evidence.
- 2975. Questions of law or fact.
- 2976. Instructions.

**(F) CONTRIBUTORY NEGLIGENCE;
DIMINUTION OF DAMAGES.**

- 2977. In general.
- 2978. Constitutional and statutory provisions.
- 2979. — In general.
- 2980. — Purpose.
- 2981. — Validity.
- 2982. — Retroactive operation.
- 2983. Applicability of contributory negligence; abrogation of doctrine.
- 2984. Care required of employee.
- 2985. Inexperienced or youthful employee.
- 2986. Reliance on care of employer.
- 2987. Scope of employment.
- 2988. Working conditions and methods of performing work.
- 2989. — In general.
- 2990. — Methods of performing work.
- 2991. — Tools, machinery, or equipment.
- 2992. — Places for work.
- 2993. Disobedience of rules or orders.
- 2994. Disregarding warnings or signals.
- 2995. Compliance with commands or threats.
- 2996. Acts in emergencies.
- 2997. Proximate cause.

**XVII. EMPLOYER'S LIABILITY
TO EMPLOYEES.(Cont'd)**

- 2998. Injury avoidable by care of employer.
- 2999. Willful injury by employee.
- 3000. Pleading.
- 3001. Presumptions and burden of proof.
- 3002. Admissibility of evidence.
- 3003. Weight and sufficiency of evidence.
- 3004. Questions of law or fact.
- 3005. — In general.
- 3006. — Working conditions and methods of performing work.
- 3007. — Disobedience of rules or orders.
- 3008. — Disregarding warnings or signals.
- 3009. — Compliance with commands or threats.
- 3010. — Proximate cause of injury.
- 3011. — Injury avoidable by care of employer.
- 3012. Instructions.

**XVIII. RIGHTS AND LIABILITIES
AS TO THIRD PARTIES.**

(A) IN GENERAL.

- 3020. In general.
- 3021. What law governs.
- 3022. Constitutional and statutory provisions.
- 3023. Preemption.
See also STATES I(B).

(B) ACTS OF EMPLOYEE.

1. IN GENERAL.

- 3025. In general.
- 3026. Nature of liability in general.
- 3027. Theory and purpose of imposing liability on employer.
- 3028. Relation of parties.
- 3029. — In general.
- 3030. — Particular cases.
- 3031. — Direction and control.
 - (1). In general.
 - (2). Specific activity.
- 3032. — Commencement of relationship.
- 3033. — Termination of relationship.
- 3034. — Owner.
- 3035. — Lessor-lessee.
- 3036. — Supervisor as employer.
- 3037. — Multiple employers in general.
- 3038. — Borrowed servants.

231H. LABOR AND EMPLOYMENT

XVIII. RIGHTS AND LIABILITIES AS
TO THIRD PARTIES.(Cont'd)

- (1). In general.
- (2). Particular cases.
- 3039. Negligent hiring.
- 3040. — In general.
- 3041. — Dangerous propensities.
- 3042. Negligent retention.
- 3043. Negligent training and supervision.
- 3044. Scope of employment.
- 3045. — In general.
- 3046. — Furtherance of employer's business.
 - (1). In general.
 - (2). Dual purpose.
 - (3). Particular cases.
- 3047. — Departures in general.
- 3048. — Particular cases involving departures.
- 3049. — Authority.
 - (1). In general.
 - (2). Express authority of employer.
 - (3). Implied authority.
 - (4). Particular cases.
- 3050. Notice to or knowledge of employee.
- 3051. Negligence in general.
- 3052. — In general.
- 3053. — Particular cases.
- 3054. Intentional acts.
- 3055. — In general.
- 3056. — Assault and battery.
 - (1). In general.
 - (2). Particular cases.
- 3057. — Libel and slander.
- 3058. — Trespass.
- 3059. — Fraud; misrepresentation.
- 3060. — Other particular intentional acts.
- 3061. — Act by employee on employee's behalf.
 - (1). In general.
 - (2). Particular cases.
- 3062. Criminal acts.
- 3063. Ratification.
- 3064. — In general.
- 3065. — Nature and grounds.
- 3066. — Acts capable of ratification.
- 3067. — Capacity of employer.
- 3068. — Knowledge of acts.
- 3069. — Express ratification.

XVIII. RIGHTS AND LIABILITIES AS
TO THIRD PARTIES.(Cont'd)

- 3070. — Implied ratification.
- 3071. — Ratification in part.
- 3072. — Retraction of ratification.
- 3073. Liability of employee.
- 3074. — In general.
- 3075. — Particular cases.
- 3076. — To fellow employees.
- 3077. Joint and several liability.

2. ACTIONS.

- 3078. In general.
- 3079. Right of action.
- 3080. Nature and form of remedy.
- 3081. Conditions precedent.
- 3082. Defenses.
- 3083. Jurisdiction and venue.
- 3084. Time to sue and limitations.
- 3085. Parties; standing.
- 3086. Pleading.
- 3087. — In general.
- 3088. — Employment relationship.
- 3089. — Scope of employment.
 - (1). In general.
 - (2). Intentional acts.
- 3090. — Negligence of employee.
- 3091. — Defenses.
- 3092. Evidence.
- 3093. — In general.
- 3094. — Presumptions and burden of proof.
 - (1). In general.
 - (2). Employment relationship.
 - (3). Scope of employment.
 - (4). — In general.
 - (5). — Intentional acts.
- 3095. — Admissibility.
- 3096. — Weight and sufficiency.
 - (1). In general.
 - (2). Negligent hiring, retention, and supervision.
 - (3). Employment relationship.
 - (4). — In general.
 - (5). — Borrowed servants.
 - (6). Scope of employment.
 - (7). — In general.
 - (8). — Intentional acts.
 - (9). — Other particular cases.

231H. LABOR AND EMPLOYMENT

XVIII. RIGHTS AND LIABILITIES AS TO THIRD PARTIES.(Cont'd)

- (10). Negligence of employee.
- (11). Defenses.
- 3097. Damages and amount of recovery.
- 3098. — In general.
- 3099. — Computation and amount.
- 3100. — Punitive or exemplary damages.
 - (1). In general.
 - (2). Intentional acts.
- 3101. — Interest.
- 3102. — Evidence.
- 3103. Trial.
- 3104. — In general.
- 3105. — Questions of law or fact.
 - (1). In general.
 - (2). Negligent hiring, retention, and supervision.
 - (3). Employment relationship.
 - (4). — In general.
 - (5). — Borrowed servants.
 - (6). Scope of employment.
 - (7). — In general.
 - (8). — Intentional acts.
 - (9). — Other particular cases.
 - (10). Negligence of employee.
 - (11). Defenses.
- 3106. — Instructions.
 - (1). In general.
 - (2). Employment relationship.
 - (3). Scope of employment.
- 3107. — Verdict and findings.
 - (1). In general.
 - (2). Inconsistent verdicts.
- 3108. Judgment.
- 3109. Costs and attorney fees.

(C) WORK OF INDEPENDENT CONTRACTOR.

- 3125. In general.
- 3126. Particular cases in general.
- 3127. — In general.
- 3128. — Construction cases.
- 3129. — Railroad cases.
- 3130. Nature of employer's liability.
- 3131. Exceptions to general rule, in general.
- 3132. Negligent selection, hiring, or retention.
- 3133. Non-delegable duty.
- 3134. — In general.
- 3135. — Particular cases.

XVIII. RIGHTS AND LIABILITIES AS TO THIRD PARTIES.(Cont'd)

- 3136. Determination of status in general.
- 3137. — In general.
- 3138. — Construction cases.
- 3139. — Special franchise or privilege.
- 3140. Extent of control.
- 3141. — In general.
- 3142. — Construction cases.
- 3143. — Other particular cases.
- 3144. Supervision.
- 3145. Inspection.
- 3146. Defective plan.
- 3147. Defective methods.
- 3148. Defective tools or equipment.
- 3149. Warnings and precautions.
- 3150. — In general.
- 3151. — Particular cases.
- 3152. Work done contrary to direction of employer.
- 3153. Work entailing wrongful conduct directed by employer.
- 3154. Necessary or natural consequences of work.
- 3155. — In general.
- 3156. — Peculiar risk doctrine.
 - (1). In general.
 - (2). Particular cases.
- 3157. — Other particular cases.
- 3158. Hazardous work.
- 3159. — In general.
- 3160. — Construction cases.
- 3161. — Blasting and explosives.
- 3162. — Other particular cases.
- 3163. Nuisance.
- 3164. Work completed or abandoned.
- 3165. Nature of compensable injuries.
- 3166. — In general.
- 3167. — Personal.
- 3168. — Economic; property damage.
- 3169. Actions.
- 3170. — In general.
- 3171. — Right of action.
- 3172. — Nature and form of remedy.
- 3173. — Conditions precedent.
- 3174. — Defenses.
- 3175. — Jurisdiction and venue.
- 3176. — Time to sue and limitations.
- 3177. — Parties; standing.

231H. LABOR AND EMPLOYMENT

**XVIII. RIGHTS AND LIABILITIES AS
TO THIRD PARTIES.(Cont'd)**

- 3178. — Pleading.
- 3179. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 3180. — Damages and amount of recovery.
 - (1). In general.
 - (2). Computation and amount.
 - (3). Punitive or exemplary damages.
 - (4). Interest.
 - (5). Evidence.
- 3181. — Trial.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). — In general.
 - (4). — Independent contractor status.
 - (5). — Control.
 - (6). — Hazardous work and peculiar risks.
 - (7). Instructions.
 - (8). Verdict and findings.
- 3182. — Judgment.
- 3183. — Costs and attorney fees.

**XIX. NOTICE OF TERMINATION;
RETRAINING.**

(A) IN GENERAL.

- 3201. In general.
- 3202. Constitutional and statutory provisions.
- 3203. — In general.
- 3204. — Purpose.
- 3205. — Validity.
- 3206. — Retroactive operation.
- 3207. Regulations in general.
- 3208. Preemption.
See also STATES I(B).
- 3209. Employers.
- 3210. — In general.
- 3211. — Creditors.
- 3212. — Parent subsidiary relationship.
- 3213. — Management firms.
- 3214. — Joint employers.
- 3215. Employees.

**XIX. NOTICE OF TERMINATION;
RETRAINING.(Cont'd)**

- 3216. Applicability of statutes and regulations.
- 3217. — In general; employment loss.
- 3218. — Number of employees.
- 3219. — Closings.
- 3220. — Mass layoffs.
- 3221. — Sales.
- 3222. — Multiple sites.
- 3223. Notice of employment loss.
- 3224. — In general.
- 3225. — Necessity.
- 3226. — Time.
- 3227. — Adequacy; sufficiency.

(B) ACTIONS.

- 3230. In general.
- 3231. Nature and form of remedy.
- 3232. Defenses.
Includes unforeseeable circumstances and offers to transfer.
- 3233. Jurisdiction and venue.
- 3234. Time to sue and limitations.
- 3235. — In general.
- 3236. — Limitations applicable in general.
- 3237. Parties; standing.
- 3238. Pleading.
- 3239. Evidence.
- 3240. — In general.
- 3241. — Presumptions and burden of proof.
- 3242. — Admissibility.
- 3243. — Weight and sufficiency.
- 3244. Damages and amount of recovery.
- 3245. — In general.
- 3246. — Computation and amount in general.
- 3247. — Good faith; mitigation.
- 3248. — Interest.
- 3249. — Evidence.
- 3250. Trial.
- 3251. — In general.
- 3252. — Questions of law or fact.
- 3253. — Instructions.
- 3254. — Verdict and findings.
- 3255. Review.
- 3256. Costs and attorney fees.

231H. LABOR AND EMPLOYMENT

XX. OFFENSES AND PENALTIES.

For penalties involving pensions and benefit plans, wages and hours, workplace safety, and mine safety, see VII, XIII, XIV, and XV respectively.

(A) IN GENERAL.

- 3260. In general.
- 3261. Constitutional and statutory provisions.
- 3262. — In general.
- 3263. — Purpose.
- 3264. — Validity.
- 3265. — Retroactive application.
- 3266. Preemption.
See also STATES I(B).
- 3267. Penalties.
- 3268. Offenses.
- 3269. — In general.
- 3270. — Misuse or misappropriation of union funds.
- 3271. — Payments or loans to employee representatives or labor organizations.
- 3272. — False records or reports.
- 3273. — Concerted activities.
- 3274. — Intimidating or interfering with employees.
- 3275. — Fraudulent breach of employment contract.

(B) PROSECUTIONS.

- 3280. In general.
- 3281. Indictment, information, or complaint.
- 3282. Evidence in general.
- 3283. Weight and sufficiency of evidence.
- 3284. Trial.
- 3285. Sentence and punishment.

233. LANDLORD AND TENANT

SUBJECTS INCLUDED

- Nature and incidents of estates for years and tenancies from year to year, at will, or at sufferance
- Leases and agreements for the occupation of real property in general

Relation between the parties to such leases and agreements, and their rights and liabilities as between themselves and as to others incident to such relation

Rent control and stabilization

Public housing

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Class actions, see FEDERAL CIVIL PROCEDURE and PARTIES

Common law writs of entry, see ENTRY, WRIT OF

Condominiums and cooperative apartments, see COMMON INTEREST COMMUNITIES

Eviction in non-lease contexts, see EJECTMENT, MORTGAGES AND DEEDS OF TRUST, VENDOR AND PURCHASER, TENANCY IN COMMON, and COMMON INTEREST COMMUNITIES

Federal preemption of state legislation, see STATES ⇌18.39

Fixtures, see FIXTURES

Ground rents, see ESTATES IN PROPERTY

Housing discrimination, see CIVIL RIGHTS ⇌1077

Indemnity, see INDEMNITY

Indians or tribes, issues peculiar to, see INDIANS ⇌176

Injunctions, see INJUNCTION

Insurance policy construction, see INSURANCE

Landlord's authority to consent to search, see SEARCHES AND SEIZURES ⇌175

Leases of personal property, see BAILMENT

Mechanics' liens, see MECHANICS' LIENS

Particular classes of persons, leases of property of, see CORPORATIONS AND BUSINESS ORGANIZATIONS, INFANTS, MENTAL HEALTH, and other specific topics

Particular species of property, leases of, see MINES AND MINERALS, RAILROADS, WATER LAW, and other specific topics

Payment of rents into registry of court, see DEPOSITS IN COURT

Rent charge estates, see ESTATES IN PROPERTY

233. LANDLORD AND TENANT

Summary judgments, see JUDGMENT and FEDERAL CIVIL PROCEDURE

Taxation, see INTERNAL REVENUE and TAXATION

Tortious interference claims, see TORTS

Unfair trade practices and consumer protection, see ANTITRUST AND TRADE REGULATION ¶200

Use and occupation of real property, implied liabilities for, see IMPLIED AND CONSTRUCTIVE CONTRACTS

I. CREATION AND EXISTENCE OF THE RELATION, ¶500-529.

II. LEASES AND AGREEMENTS IN GENERAL, ¶530-619.

(A) REQUISITES AND VALIDITY, ¶530-589.

(B) CONSTRUCTION AND OPERATION, ¶590-619.

III. LANDLORD'S TITLE AND REVERSION, ¶620-679.

(A) RIGHTS AND POWERS OF LANDLORD, ¶620-649.

(B) ESTOPPEL OF TENANT, ¶650-679.

IV. PARTICULAR KINDS OF TENANCIES AND ATTRIBUTES THEREOF, ¶680-999.

(A) NATURE AND EXTENT, ¶680-719.

1. ESTATE FOR YEARS, ¶680-689.

2. PERIODIC TENANCIES, ¶690-699.

3. TENANCIES AT WILL AND AT SUFFERANCE, ¶700-719.

(B) ASSIGNMENT AND SUBLETTING, ¶720-819.

1. IN GENERAL, ¶720-729.

2. RESTRICTIONS AS TO ASSIGNMENT OR SUBLETTING, ¶730-749.

3. PAROL ASSIGNMENTS AND SUBLETTINGS, ¶750-759.

4. REQUISITES AND VALIDITY OF ASSIGNMENTS AND SUBLETTINGS, ¶760-769.

5. CONSTRUCTION AND OPERATION OF ASSIGNMENTS, ¶770-789.

6. CONSTRUCTION AND OPERATION OF SUBLEASES, ¶790-819.

(C) MORTGAGE OF LEASEHOLD, ¶820-829.

IV. PARTICULAR KINDS OF TENANCIES AND ATTRIBUTES THEREOF—Cont'd

(D) EXTENSIONS AND RENEWALS, ¶830-869.

(E) OPTION TO PURCHASE PREMISES, ¶870-889.

(F) TERMINATION, ¶890-999.

1. IN GENERAL, ¶890-909.

2. BREACH OF COVENANT OR CONDITION, ¶910-929.

3. VACATION, SURRENDER, OR ABANDONMENT OF PREMISES, ¶930-939.

4. WAIVER OF FORFEITURE, ¶940-949.

5. LANDLORD'S NOTICE OF TERMINATION, ¶950-969.

6. TENANT'S NOTICE OF INTENTION TO QUIT, ¶970-979.

7. ACTIONS, ¶980-999.

V. ENJOYMENT AND USE OF PREMISES, ¶1000-1399.

(A) COVENANTS IN GENERAL, ¶1000-1039.

(B) DESCRIPTION, EXTENT, AND CONDITION, ¶1040-1059.

(C) POSSESSION, ¶1060-1099.

(D) INCUMBRANCES, TAXES, AND ASSESSMENTS, ¶1100-1109.

(E) REPAIRS, MAINTENANCE, AND ALTERATIONS, ¶1110-1139.

(F) INSURANCE, ¶1140-1159.

(G) IMPROVEMENTS AND COVENANTS THEREFOR, ¶1160-1179.

(H) CONDITION OF PREMISES AT TERMINATION OF TENANCY, ¶1180-1199.

(I) PERSONAL PROPERTY ON PREMISES AT TERMINATION OF TENANCY, ¶1200-1209.

(J) LIABILITY FOR DANGEROUS OR DEFECTIVE CONDITIONS, ¶1210-1369.

1. IN GENERAL, ¶1210-1219.

2. EXISTENCE OF DUTY OF CARE, ¶1220-1249.

3. STANDARD OF CARE, ¶1250-1259.

4. PROXIMATE CAUSE, ¶1260-1269.

5. NECESSITY OF INJURY, ¶1270-1279.

6. PARTICULAR CONDITIONS, ¶1280-1329.

7. NUISANCES, ¶1330-1339.

233. LANDLORD AND TENANT

V. ENJOYMENT AND USE OF PREMISES—Cont'd

(J) LIABILITY FOR DANGEROUS OR DEFECTIVE CONDITIONS

—Cont'd

8. DEFENSES AND MITIGATING CIRCUMSTANCES, ¶1340–1349.
9. ACTIONS, ¶1350–1369.

(K) CONSTRUCTIVE OR PARTIAL EVICTION, ¶1370–1399.

VI. DEPOSITS AND OTHER SECURITY BY TENANT, ¶1400–1419.

VII. RENT, ¶1420–1729.

(A) RIGHTS AND LIABILITIES, ¶1420–1529.

1. IN GENERAL, ¶1420–1429.
2. PARTICULAR GROUNDS OF DISCHARGE FROM LIABILITY, ¶1430–1469.
3. AMOUNT, ¶1470–1489.
4. TIME OF ACCRUAL, ¶1490–1494.
5. PERSONS ENTITLED, ¶1495–1499.
6. PERSONS LIABLE, ¶1500–1514.
7. ABATEMENT, ¶1515–1519.
8. PAYMENT, ¶1520–1529.

(B) ACTIONS, ¶1530–1599.

(C) LIEN, ¶1600–1659.

(D) DISTRESS, ¶1660–1729.

VIII. REENTRY AND RECOVERY OF POSSESSION BY LANDLORD, ¶1730–1829.

(A) IN GENERAL, ¶1730–1734.

(B) SELF-HELP, ¶1735–1739.

(C) ACTIONS FOR RECOVERY OF POSSESSION, ¶1740–1779.

(D) ACTIONS FOR UNLAWFUL DETAINER, ¶1780–1809.

(E) WRONGFUL DISPOSSESSION, ¶1810–1829.

IX. REGULATED RENTS, ¶1830–2029.

(A) REGULATION OF RENTS IN GENERAL, ¶1830–1934.

1. IN GENERAL, ¶1830–1849.
2. PERSONS AND PREMISES SUBJECT TO REGULATIONS, ¶1850–1869.
3. ESTABLISHMENT OF RENT, ¶1870–1899.
4. ADJUSTMENT OF RENT, ¶1900–1924.
5. REMEDIES, ¶1925–1929.
6. TERMINATION OF RENT CONTROL; RECONTROL, ¶1930–1934.

(B) TRANSFER OF TENANCY RIGHTS, ¶1935–1939.

IX. REGULATED RENTS—Cont'd

(C) PROHIBITED LANDLORD CONDUCT, ¶1940–1959.

(D) RECOVERY OF POSSESSION, ¶1960–2029.

1. IN GENERAL, ¶1960–1969.
2. PROTECTED PERSONS AND PREMISES, ¶1970–1979.
3. GROUNDS FOR RECOVERY OR NON-RECOVERY, ¶1980–1999.
4. PROHIBITED LANDLORD CONDUCT, ¶2000–2009.
5. PROCEDURE, ¶2010–2029.

X. PUBLIC AND PUBLICLY SUBSIDIZED HOUSING, ¶2030–2089.

(A) IN GENERAL, ¶2030–2039.

(B) TENANCY, ¶2040–2049.

(C) OPERATION AND MAINTENANCE, ¶2050–2059.

(D) RENT, ¶2060–2069.

(E) TERMINATION OF TENANCY; EVICTION, ¶2070–2089.

XI. MOBILE HOMES AND MOBILE HOME PARKS, ¶2090–2139.

XII. RENTING ON SHARES, ¶2140–2175.

I. CREATION AND EXISTENCE OF THE RELATION.

500. In general.
501. Nature of the relation.
502. What law governs.
503. Constitutional and statutory provisions.
504. Preemption.
505. Property which may be leased.
506. Express contract in general.
507. — In general.
508. — Board and lodging.
509. Implied tenancy.
510. — In general.
511. — Joint tenants and tenants in common.
512. — Vendor and purchaser.
513. — Occupancy incident to employment.
514. — Occupancy under void lease.
515. — Occupancy under agreement for lease.
516. — Occupancy without agreement.
517. Attornment.
518. Disclaimer or disavowal of relation.
519. Estoppel to deny relation.
520. Evidence as to relation.
521. — In general.

233. LANDLORD AND TENANT

I. CREATION AND EXISTENCE OF THE RELATION.(Cont'd)

- 522. — Presumptions and burden of proof.
- 523. — Admissibility.
- 524. — Weight and sufficiency.
- 525. Questions of law or fact.
- 526. Criminal interference with relation by third persons.

II. LEASES AND AGREEMENTS IN GENERAL.

(A) REQUISITES AND VALIDITY.

- 530. In general.
- 531. Nature of the contract.
- 532. What law governs.
- 533. Existence and condition of property.
- 534. Agreements for leases.
- 535. — In general.
- 536. — Lease or agreement for lease.
- 537. — Performance or breach of agreement.
- 538. — Actions.
- 539. — Damages for breach of agreement.
- 540. Parol agreements.
- 541. Form and contents of lease and validity in general.
- 542. — In general.
- 543. — Unconscionability; adhesion contracts.
- 544. — Parties.
- 545. — Property.
- 546. — Actions.
- 547. Execution.
- 548. Seal.
- 549. Stamp.
- 550. Offer and acceptance.
- 551. — In general.
- 552. — Delivery.
- 553. — Meeting of minds; mistake.
- 554. — Actions.
- 555. Consideration.
- 556. Recording lease or contract.
- 557. Fraud.
- 558. — In general.
- 559. — Concealment.
- 560. — Actions.
- 561. Legality of object.
- 562. — In general.
- 563. — Exculpatory clauses.

II. LEASES AND AGREEMENTS IN GENERAL.(Cont'd)

- 564. — Sale of controlled substances or intoxicating liquor.
- 565. — Gaming.
- 566. — Tax evasion.
- 567. — Actions.
- 568. Limitation of term.
- 569. Estoppel or waiver as to defects or objections.
- 570. Ratification of defective or invalid lease or contract.
- 571. Modifications or amendments.
- 572. Rescission and cancellation.
- 573. — In general.
- 574. — Grounds.
- 575. — Conditions precedent to rescission.
- 576. — Time for rescission and laches.
- 577. — Acts constituting rescission.
- 578. — Actions.
- 579. Right to contest validity.

(B) CONSTRUCTION AND OPERATION.

- 590. In general.
- 591. Existence of ambiguity.
- 592. What law governs.
- 593. Intention of parties.
- 594. Construction against drafter.
- 595. Reasonable construction.
- 596. Ordinary or technical language.
- 597. Written terms as controlling.
- 598. Construction as a whole.
- 599. Conflicting terms.
- 600. Preliminary negotiations and oral agreements.
- 601. Construing instruments together.
- 602. Existing law as part of contract.
- 603. Construction by parties.
- 604. Parties to lease or contract.
- 605. Place and time.
- 606. Conditions.
- 607. Time as of the essence of the contract.
- 608. Modifications or amendments.
- 609. Entire or severable contracts.
- 610. Evidence.
- 611. Questions of law or fact.

233. LANDLORD AND TENANT

III. LANDLORD'S TITLE AND REVERSION.

(A) RIGHTS AND POWERS OF LANDLORD.

- 620. In general.
- 621. Title and possession to sustain lease.
- 622. Authority and control over demised premises.
- 623. Nature of reversion.
- 624. Transfer of reversion.
- 625. — In general.
- 626. — Restrictions on transfer.
- 627. — Rights and liabilities of grantee or assignee.
- 628. Rights of action against third persons.
- 629. Injuries to reversion.
- 630. — In general.
- 631. — Discarded materials and cleanliness.
- 632. — Environmental damage.
- 633. — Fire.
- 634. — Waste.
- 635. — Waiver and estoppel.
- 636. — Actions.
 - (1). In general.
 - (2). Time to sue and limitations.
 - (3). Parties.
 - (4). Pleading.
 - (5). Evidence.
 - (6). — In general.
 - (7). — Presumptions and burden of proof.
 - (8). — Admissibility.
 - (9). — Weight and sufficiency.
 - (10). Trial.
 - (11). — In general.
 - (12). — Questions of law or fact.
 - (13). — Instructions.
 - (14). Remedies.
 - (15). — In general.
 - (16). — Damages.
 - (17). — Costs and attorney fees.
- 637. — Criminal responsibility.
- 638. Possession of tenant as possession of landlord.
- 639. — In general.
- 640. — Effect of surrender or attornment by tenant to adverse claimant.
- 641. Assignment of rent.
- 642. — In general.
- 643. — Rights and liabilities of assignees.

III. LANDLORD'S TITLE AND REVERSION.(Cont'd)

- 644. Conveyance to tenant.
- 645. — In general.
- 646. — Merger.

(D) ESTOPPEL OF TENANT.

- 650. In general.
- 651. Leases and agreements as ground of estoppel.
- 652. — In general.
- 653. — Estoppel as dependent on validity of lease.
- 654. — Estoppel as dependent on validity of landlord's title.
- 655. — Tenant in possession at time relation arose.
- 656. — Tenant holding over.
- 657. Operation of estoppel against tenant.
- 658. — In general.
- 659. — Actions in which estoppel is effective.
- 660. — Necessity of surrendering possession to discharge ground of estoppel.
- 661. — Sufficiency of surrender.
- 662. — Denial of title as to part of property.
- 663. — Time as to which estoppel is effective.
- 664. Persons estopped.
- 665. Persons as to whom tenant is estopped.
- 666. Adverse possession of tenant.
- 667. — In general.
- 668. — Necessity of surrender of premises by tenant or repudiation of tenancy and notice.
- 669. — Character of tenant's possession.
- 670. Purchase of tax title.
- 671. Attornment to third person.
- 672. Effect of eviction by landlord.

IV. PARTICULAR KINDS OF TENANCIES AND ATTRIBUTES THEREOF.

(A) NATURE AND EXTENT.

1. ESTATE FOR YEARS.

- 680. In general.
- 681. Commencement.
- 682. Duration.

233. LANDLORD AND TENANT

2. PERIODIC TENANCIES.

- 690. In general.
- 691. Commencement.
- 692. Duration.
- 693. Creation.
- 694. — In general.
- 695. — Tenancy from year to year.
 - (1). In general.
 - (2). Parol or invalid leases or contracts.
 - (3). Tenant holding over after expiration of term.
- 696. — Tenancy from month to month.
 - (1). In general.
 - (2). Parol or invalid leases or contracts.
 - (3). Tenant holding over after expiration of term.

3. TENANCIES AT WILL AND AT SUFFERANCE.

- 700. In general.
- 701. Commencement.
- 702. Duration.
- 703. Creation of tenancy at will.
- 704. — In general.
- 705. — Occupancy under agreement indefinite as to term.
- 706. — Parol or invalid leases.
- 707. — Tenant holding over after expiration of term.
- 708. Creation of tenancy at sufferance.
- 709. — In general.
- 710. — Tenant holding over after expiration of term.

(B) ASSIGNMENT AND SUBLETTING.

1. IN GENERAL.

- 720. In general.
- 721. Assignability and agreements to assign leases and contracts.
- 722. Right to assign or sublet in general.
- 723. — In general.
- 724. — Statutory prohibition.

2. RESTRICTIONS AS TO ASSIGNMENT OR SUBLETTING.

- 730. In general.
- 731. What constitutes breach of covenant.
- 732. Consent of lessor, and waiver thereof.
- 733. — In general.

IV. PARTICULAR KINDS OF TENANCIES AND ATTRIBUTES THEREOF.(Cont'd)

- 734. — Reasonableness.
- 735. — Waiver.
- 736. Actions.
- 737. — In general.
- 738. — Time to sue and limitations.
- 739. — Parties.
- 740. — Pleading.
- 741. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 742. — Trial.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Instructions.
- 743. — Remedies.
 - (1). In general.
 - (2). Damages.
 - (3). Costs and attorney fees.

3. PAROL ASSIGNMENTS AND SUBLETTINGS.

- 750. In general.

4. REQUISITES AND VALIDITY OF ASSIGNMENTS AND SUBLETTINGS.

- 760. In general.
- 761. Delivery of assignment.
- 762. Necessity of record.

5. CONSTRUCTION AND OPERATION OF ASSIGNMENTS.

- 770. In general.
- 771. Rights and liabilities of assignee.
- 772. Rights and liabilities of assignor.
- 773. Assignment as security.
- 774. Actions.
- 775. — In general.
- 776. — Time to sue and limitations.
- 777. — Parties.
- 778. — Pleading.
- 779. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.

233. LANDLORD AND TENANT

IV. PARTICULAR KINDS OF TENANCIES AND ATTRIBUTES THEREOF.(Cont'd)

- 780. — Trial.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Instructions.
 - 781. — Remedies.
 - (1). In general.
 - (2). Damages.
 - (3). Costs and attorney fees.
- 6. CONSTRUCTION AND OPERATION OF SUBLEASES.**
- 790. In general.
 - 791. Term.
 - 792. Liability of sublessor to landlord.
 - 793. Liability of sublessor to sublessee.
 - 794. Liability of landlord or sublessor to third parties.
 - 795. Rights and liabilities of sublessees.
 - 796. Actions.
 - 797. — In general.
 - 798. — Time to sue and limitations.
 - 799. — Parties.
 - 800. — Pleading.
 - 801. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
 - 802. — Trial.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Instructions.
 - 803. — Remedies.
 - (1). In general.
 - (2). Damages.
 - (3). Costs and attorney fees.

(C) MORTGAGE OF LEASEHOLD.

- 820. In general.
- 821. Rights of mortgagee.
- 822. Rights of purchaser at foreclosure sale.
- 823. Recording and filing.

(D) EXTENSIONS AND RENEWALS.

- 830. In general.
- 831. Covenants for extension or renewal.
- 832. — In general.

IV. PARTICULAR KINDS OF TENANCIES AND ATTRIBUTES THEREOF.(Cont'd)

- 833. — Requisites and sufficiency.
- 834. — Conditions precedent to right to extend or renew.
 - (1). In general.
 - (2). Forfeiture of right to renewal.
- 835. — Security for renewal.
- 836. — Exercise of extension or renewal option.
 - (1). In general.
 - (2). Notice of election.
 - (3). — In general.
 - (4). — Form and sufficiency.
 - (5). — Time.
 - (6). — Implied or presumed notice.
 - (7). — Waiver of notice.
 - (8). — Effect of failure.
 - (9). Proceedings to fix amount of rent.
- 837. Persons entitled to renewal.
- 838. — In general.
- 839. — Assignees or undertenants.
- 840. Persons bound by agreements to renew.
- 841. Number of renewals.
- 842. Perpetual or continual renewals.
- 843. Renewal leases.
- 844. — In general.
- 845. — Covenants and conditions.
- 846. — Evidence of renewal.
- 847. Extension or renewal by endorsement on lease.
- 848. Implied contracts to extend or renew in general.
- 849. Holding over, extension or renewal by.
- 850. — In general.
- 851. — Conditions in general.
- 852. — Term.
- 853. — What constitutes holding over.
- 854. — Landlord's right of election to consider holding over as a renewal.
- 855. Effect of extension or renewal.
- 856. Actions.
 - 857. — In general.
 - 858. — Time to sue and limitations.
 - 859. — Parties.
 - 860. — Pleading.
 - 861. — Evidence.
 - (1). In general.

233. LANDLORD AND TENANT

IV. PARTICULAR KINDS OF TENANCIES AND ATTRIBUTES THEREOF.(Cont'd)

- (2). Presumptions and burden of proof.
- (3). Admissibility.
- (4). Weight and sufficiency.
- 862. — Trial.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Instructions.
- 863. — Remedies.
 - (1). In general.
 - (2). Damages.
 - (3). Costs and attorney fees.
- (E) OPTION TO PURCHASE PREMISES.
- 870. In general.
- 871. Statutory rights.
- 872. — In general.
- 873. — Exercise of purchase option.
- 874. — Assignee's rights.
- 875. — Actions and remedies.
- 876. Covenants.
- 877. — In general.
- 878. — Existence, scope, and validity.
- 879. — Conditions precedent.
- 880. — Price.
- 881. — Exercise of purchase option.
 - (1). In general.
 - (2). Form and sufficiency.
 - (3). Time.
- 882. — Assignee's rights.
- 883. — Surrender, forfeiture, or waiver.
- 884. — Breach of agreement.
 - (1). In general.
 - (2). Effect.
- 885. — Actions.
 - (1). In general.
 - (2). Time to sue and limitations.
 - (3). Parties.
 - (4). Pleading.
 - (5). Evidence.
 - (6). — In general.
 - (7). — Presumptions and burden of proof.
 - (8). — Admissibility.
 - (9). — Weight and sufficiency.
 - (10). Trial.
 - (11). — In general.

IV. PARTICULAR KINDS OF TENANCIES AND ATTRIBUTES THEREOF.(Cont'd)

- (12). — Questions of law or fact.
- (13). — Instructions.
- (14). Remedies.
- (15). — In general.
- (16). — Damages.
- (17). — Costs and attorney fees.
- (F) TERMINATION.
- 1. IN GENERAL.
- 890. In general.
- 891. Constitutional and statutory provisions.
- 892. Option to cancel.
- 893. — In general.
- 894. — Periodic tenancy.
- 895. — Tenancy at will.
- 896. — Tenancy at sufferance.
- 897. Expiration of term.
- 898. Death of lessee.
- 899. Transfer or termination of landlord's estate.
- 900. — In general.
- 901. — Death or disability of landlord.
- 902. Merger of tenancy in general.
- 903. Purchase under option.
- 904. Creation of new tenancy.
- 905. Eviction.
- 906. Appropriation of premises to public use.
- 907. Injury to or destruction of premises.
- 908. Insolvency or bankruptcy.
- 909. Forfeiture by wrongful act of tenant.
- 2. BREACH OF COVENANT OR CONDITION.
- 910. In general.
- 911. Equitable considerations.
- 912. Who may take advantage of breach.
- 913. Breach by lessor.
- 914. Assigning or subletting.
- 915. Use of premises.
- 916. Failure to repair or remedy defects.
- 917. Nonpayment of taxes or assessments.
- 918. Insurance.
- 919. Improvements.
- 920. Nonpayment of rent.
- 921. — In general.
- 922. — Necessity of demand.
- 923. — Effect of tender of rent.

233. LANDLORD AND TENANT

3. VACATION, SURRENDER, OR ABANDONMENT OF PREMISES.

- 930. In general.
- 931. Covenants and agreements.
- 932. Surrender by cotenant or sublessor.
- 933. Acceptance.
- 934. Surrender of keys.
- 935. Person to whom surrender may be made.
- 936. Assignment; substitution of tenants.
- 937. Operation and effect.

4. WAIVER OF FORFEITURE.

- 940. In general.
- 941. Acceptance of rent.
- 942. Enforcing payment of rent by legal proceedings.

5. LANDLORD'S NOTICE OF TERMINATION.

- 950. In general.
- 951. Necessity.
- 952. Time.
- 953. — In general.
- 954. — Periodic tenancies.
- 955. — Tenancies at will and at sufferance.
- 956. Sufficiency.
- 957. — In general.
- 958. — Service.
- 959. Waiver of notice.
- 960. Vitiating of notice already given.

6. TENANT'S NOTICE OF INTENTION TO QUIT.

- 970. In general.
- 971. Waiver.
- 972. Vitiating of notice already given.

7. ACTIONS.

- 980. In general.
- 981. Time to sue and limitations.
- 982. Parties.
- 983. Pleading.
- 984. Evidence.
- 985. — In general.
- 986. — Presumptions and burden of proof.
- 987. — Admissibility.
- 988. — Weight and sufficiency.
 - (1). In general.
 - (2). Breach of covenant or condition.
 - (3). Vacation, surrender, or abandonment of premises.

IV. PARTICULAR KINDS OF TENANCIES AND ATTRIBUTES THEREOF.(Cont'd)

(4). Notice.

- 989. Trial.
- 990. — In general.
- 991. — Questions of law or fact.
- 992. — Instructions.
- 993. Remedies.
- 994. — In general.
- 995. — Damages.
- 996. — Costs and attorney fees.

V. ENJOYMENT AND USE OF PREMISES.

(A) COVENANTS IN GENERAL.

- 1000. In general.
- 1001. Restrictive covenants.
- 1002. Covenants running with the land.
- 1003. Dependent and independent clauses.
- 1004. Breach of covenant.
- 1005. — In general.
- 1006. — Anticipatory breach.
- 1007. — Substantial or partial performance.
- 1008. — Delay in performance.
- 1009. — Excuses.
- 1010. — Acceptance or waiver.
- 1011. — Discharge.
- 1012. Particular kinds of covenants.
- 1013. — In general.
- 1014. — Powers reserved to or surrendered by lessor.
- 1015. — Related properties.
 - (1). In general.
 - (2). Supporting businesses.
 - (3). Competing businesses.
- 1016. — Financing, fees, and costs in general.
- 1017. — Exculpatory clauses.
- 1018. — Implied covenants.
 - (1). In general.
 - (2). Good faith and fair dealing.
- 1019. Consequences of breach.
- 1020. — In general.
- 1021. — Tort or contract liability.
- 1022. — Criminal responsibility.
- 1023. Actions.
- 1024. — In general.
- 1025. — Demand.
- 1026. — Time to sue and limitations.

233. LANDLORD AND TENANT

**V. ENJOYMENT AND USE OF
PREMISES.(Cont'd)**

- 1027. — Parties.
- 1028. — Pleading.
- 1029. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 1030. — Trial.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Instructions.
- 1031. — Remedies.
 - (1). In general.
 - (2). Damages.
 - (3). Costs and attorney fees.

(B) DESCRIPTION, EXTENT, AND CONDITION.

- 1040. In general.
- 1041. Sufficiency of description.
- 1042. Extent of premises.
- 1043. Property included in general.
- 1044. Appurtenances.
- 1045. — In general.
- 1046. — Means of entrance or exit.
- 1047. — Parking.
- 1048. — Utilities.
- 1049. Tenantable condition of premises.
- 1050. — In general.
- 1051. — Statutory regulations in general.
- 1052. — Warranty of habitability.
- 1053. — Suitability or fitness of premises.
- 1054. — Actions.
 - (1). In general.
 - (2). Pleading.
 - (3). Evidence.
 - (4). Trial.
 - (5). Damages and costs.
- 1055. Crimes and prosecutions.

(C) POSSESSION.

- 1060. In general.
- 1061. Duty of tenant to take possession.
- 1062. Right of entry and possession of tenant.
- 1063. Delivery of possession.
- 1064. — In general.

**V. ENJOYMENT AND USE OF
PREMISES.(Cont'd)**

- 1065. — Waiver of failure to deliver possession.
- 1066. Actions for failure to deliver possession.
- 1067. — In general.
- 1068. — Pleading.
- 1069. — Evidence.
- 1070. — Damages.
- 1071. — Questions for jury.
- 1072. Right of quiet enjoyment.
- 1073. — In general.
- 1074. — Statutory rights.
- 1075. — Express and implied covenants.
- 1076. — What constitutes breach of covenant.
- 1077. — Actions.
 - (1). In general.
 - (2). Evidence.
 - (3). Trial.
 - (4). Damages and costs.
- 1078. Disturbance of possession of tenant.
- 1079. — In general.
- 1080. — By landlord.
 - (1). In general.
 - (2). Actions.
 - (3). — In general.
 - (4). — Evidence.
 - (5). — Trial.
 - (6). — Damages and costs.
- 1081. — By third persons.
 - (1). In general.
 - (2). Liability of landlord.
 - (3). Actions.
 - (4). — In general.
 - (5). — Evidence.
 - (6). — Trial.
 - (7). — Damages and costs.
- 1082. Use of premises.
- 1083. — In general.
- 1084. — Purpose for which premises may be used.
- 1085. — Mode of use.
 - (1). In general.
 - (2). Restrictions in lease.
- 1086. — Rights, duties, and liabilities of sub-lessees or assignees.

233. LANDLORD AND TENANT

V. ENJOYMENT AND USE OF PREMISES.(Cont'd)

1087. — Interference with use by landlord or others.
- (1). In general.
- (2). Restrictive covenants.
1088. — Actions.
- (1). In general.
- (2). Evidence.
- (3). Trial.
- (4). Damages and costs.
1089. Cultivation of land under farm leases.
1090. — In general.
1091. — Rights and duties of tenant in general.
1092. — Timber.
1093. — Manure.
1094. — Crops.
- (1). In general.
- (2). Right or title to crops in general.
- (3). Right to way-going crop.
- (4). Tenant of land subject to judgment lien.
- (5). Injury to crop.
- (6). Action to recover value.
1095. Injuries to premises.
1096. — In general.
1097. — By landlord.
1098. — By third persons.
- (1). In general.
- (2). Injuries to grass and crops.
- (3). Obstruction of light.
- (4). Obstruction of way.
- (5). Liability of landlord.
- (6). Actions in general.
- (7). Damages.
- (8). Right of tenant to abate nuisance.
1099. Duty of tenant to surrender on termination of lease.

(D) INCUMBRANCES, TAXES, AND ASSESSMENTS.

1100. In general.
1101. Covenants against incumbrances.
1102. Duty to remove or discharge incumbrances.
1103. Taxes and assessments.
1104. — In general.
1105. — Covenants and agreements.
- (1). In general.

V. ENJOYMENT AND USE OF PREMISES.(Cont'd)

- (2). What taxes or assessments are within the covenant.
- (3). Liability of assignees.
- (4). Actions for breach.
1106. Liabilities for taxes and assessments.
- (E) REPAIRS, MAINTENANCE, AND ALTERATIONS.**
1110. In general.
1111. Landlord's right of entry to maintain or repair.
1112. Rights of subtenants.
1113. Right of tenant to maintain or repair at landlord's cost.
1114. Statutory provisions.
1115. Covenants and agreements as to maintenance, repairs, and alterations.
1116. — In general.
1117. — Consideration.
1118. — Construction and operation in general.
1119. — Nature of maintenance or repairs covered.
1120. — Right of landlord to notice that maintenance or repairs are necessary.
1121. — Agreement by landlord to pay for maintenance or repairs.
1122. — Rights and liabilities of assignees and subtenants.
1123. — Waiver of claims or stipulations.
1124. — Right of tenant to maintain or repair and recover cost.
1125. — Alterations by tenant.
1126. — Duty to rebuild on destruction of property.
1127. — Mode of maintenance or repair.
1128. Boundaries and fences.
1129. Duty to rebuild on destruction of property.
1130. Actions for failure to maintain, repair, or alter.
1131. — In general.
1132. — Demand.
1133. — Time to sue and limitations.
1134. — Parties; standing.
1135. — Pleading.
1136. — Defenses.
1137. — Evidence.
- (1). In general.

233. LANDLORD AND TENANT

V. ENJOYMENT AND USE OF PREMISES.(Cont'd)

- (2). Presumptions and burden of proof.
- (3). Admissibility.
- (4). Weight and sufficiency.
- 1138. — Trial.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Instructions.
- 1139. — Remedies.
 - (1). In general.
 - (2). Damages.
 - (3). Costs and attorney fees.

(F) INSURANCE.

- 1140. In general.
- 1141. Constitutional, statutory, and regulatory provisions.
- 1142. Validity and construction.
- 1143. Breach.
- 1144. Actions.
- 1145. — In general.
- 1146. — Time to sue and limitations.
- 1147. — Parties; standing.
- 1148. — Pleading.
- 1149. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 1150. — Trial.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Instructions.
- 1151. — Remedies.
 - (1). In general.
 - (2). Damages.
 - (3). Costs and attorney fees.

(G) IMPROVEMENTS AND COVENANTS THEREFOR.

- 1160. In general.
- 1161. Lessor's consent.
- 1162. Covenant by lessee to make improvements.
- 1163. Improvements by landlord and covenants therefor.
- 1164. Ownership of improvements in general.

V. ENJOYMENT AND USE OF PREMISES.(Cont'd)

- 1165. Right to remove and agreements for removal of improvements.
- 1166. Forfeiture or waiver of right to remove improvements.
- 1167. Right to compensation in general.
- 1168. Covenants and agreements to pay for improvements.
- 1169. Liabilities of successors of lessor.
- 1170. Mode of termination of tenancy as affecting right to compensation.
- 1171. Actions.
- 1172. — In general.
- 1173. — Parties.
- 1174. — Pleading.
- 1175. — Evidence.
- 1176. — Trial.
- 1177. — Remedies.
 - (1). In general.
 - (2). Lien for value of improvements.
 - (3). Damages.
 - (4). Costs and attorney fees.

(H) CONDITION OF PREMISES AT TERMINATION OF TENANCY.

- 1180. In general.
- 1181. Covenants and agreements as to condition of premises on termination of tenancy.
- 1182. Duty of tenant to rebuild or replace personal property.
- 1183. Actions.
- 1184. — In general.
- 1185. — Time to sue and limitations.
- 1186. — Parties; standing.
- 1187. — Pleading.
- 1188. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 1189. — Trial.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Instructions.
- 1190. — Remedies.
 - (1). In general.

233. LANDLORD AND TENANT

V. ENJOYMENT AND USE OF PREMISES.(Cont'd)

- (2). Damages.
- (3). Costs and attorney fees.

(I) PERSONAL PROPERTY ON PREMISES AT TERMINATION OF TENANCY.

- 1200. In general.
- 1201. Care of property left on premises by outgoing tenant.
- 1202. Actions.
- 1203. — In general.
- 1204. — Evidence.
- 1205. — Trial.
- 1206. — Remedies.

(J) LIABILITY FOR DANGEROUS OR DEFECTIVE CONDITIONS.

1. IN GENERAL.

- 1210. In general.
- 1211. Statutory and regulatory provisions.

2. EXISTENCE OF DUTY OF CARE.

- 1220. In general.
- 1221. Landlord's duty.
- 1222. — In general.
- 1223. — Ownership, custody, and control.
- 1224. — Knowledge or notice in general.
 - (1). In general.
 - (2). Constructive notice.
 - (3). Knowledge or notice of injured party.
- 1225. — Conditions created or known by defendant.
- 1226. — Foreseeability.
- 1227. — Voluntarily assumed duty.
 - (1). In general.
 - (2). Contractual duty.
- 1228. — Duty based on statute or other regulation.
 - (1). In general.
 - (2). Safe workplace laws.
- 1229. — Duty as to children.
- 1230. — Duty to inspect or discover.
- 1231. — Protection against acts of third persons.
- 1232. — Duty to warn.
- 1233. — Duty to repair.
- 1234. — Public and common areas.
- 1235. — Strict liability.

V. ENJOYMENT AND USE OF PREMISES.(Cont'd)

- 1236. — Duration and termination of duty.
- 1237. — Public housing authorities.
- 1238. Duty of managing agent.
- 1239. Duty of former owners of property.
- 1240. Tenant's duty.
- 1241. — In general.
- 1242. — Voluntarily assumed duty.
 - (1). In general.
 - (2). Contractual duty.
- 1243. Duty based on status of plaintiff.
- 1244. — In general.
- 1245. — Tenants or occupants.
- 1246. — Employees of tenant.
- 1247. — Subtenants.
- 1248. — Third persons.
- 1249. Breach of duty.

3. STANDARD OF CARE.

- 1250. In general.
- 1251. Not insurer or guarantor.
- 1252. Reasonable or ordinary care in general.
- 1253. Reasonably safe or unreasonably dangerous conditions.
- 1254. Protection against acts of third persons in general.
- 1255. Standard established by statute or other regulation.
- 1256. Vulnerable persons.

4. PROXIMATE CAUSE.

- 1260. In general.
- 1261. Necessity.
- 1262. Requisites, definitions, and distinctions.

5. NECESSITY OF INJURY.

- 1270. In general.

6. PARTICULAR CONDITIONS.

- 1280. In general.
- 1281. Doors, entryways, and exits.
- 1282. Windows.
- 1283. Halls and passageways.
- 1284. Floors.
- 1285. — In general.
- 1286. — Inequalities in surface.
- 1287. — Rugs, carpets, and mats.
- 1288. — Water and other substances.

233. LANDLORD AND TENANT

V. ENJOYMENT AND USE OF PREMISES.(Cont'd)

- 1289. Steps, stairs, and ramps.
- 1290. — In general.
- 1291. — Substances and objects.
- 1292. — Handrails.
- 1293. Walls and paint.
- 1294. Basements and cellars.
- 1295. Attics.
- 1296. Roofs and ceilings.
- 1297. Elevators and escalators.
- 1298. Decks, balconies, and patios.
- 1299. Furniture, shelves, displays, carts, and other accessories.
- 1300. Utilities.
- 1301. — In general.
- 1302. — Water.
- 1303. — Gas and electricity.
- 1304. — Heating, ventilation, and cooling.
- 1305. Machinery and appliances.
- 1306. Public and common areas.
- 1307. — In general.
- 1308. — Lobbies; vestibules.
- 1309. — Building facades.
- 1310. — Walkways, paths, and outbuildings.
- 1311. — Parking lots, driveways, and alleys.
- 1312. — Yards and lawns.
- 1313. — Trees.
- 1314. Lighting.
- 1315. Swimming pools and hot tubs.
- 1316. Bodies of water and beaches.
- 1317. Snow and ice.
- 1318. Excavations, holes, drop-offs, and shafts.
- 1319. Ladders and scaffolds.
- 1320. Smoke and fire.
- 1321. Animals.
- 1322. Acts of third persons.
- 1323. Injuries to property.
- 1324. — In general.
- 1325. — Property of tenants.
- 1326. — Property of third persons.

7. NUISANCES.

- 1330. In general.
- 1331. Liability of landlord.
- 1332. Liability of tenant.

8. DEFENSES AND MITIGATING CIRCUMSTANCES.

- 1340. In general.
- 1341. Notice to or knowledge of injured party as to defects.
- 1342. Conduct or fault of injured party.
- 1343. Fault of third person.
- 1344. Assumption of risk.
- 1345. Waiver of duty.

9. ACTIONS.

- 1350. In general.
- 1351. Conditions precedent.
- 1352. Time to sue and limitations.
- 1353. Parties; standing.
- 1354. Pleading.
- 1355. Evidence.
- 1356. — In general.
- 1357. — Presumptions and burden of proof.
- 1358. — Admissibility.
- 1359. — Weight and sufficiency.
 - (1). In general.
 - (2). Injuries to tenants or occupants and their employees.
 - (3). Injuries to third persons.
 - (4). Injuries to property.
- 1360. Trial.
- 1361. — In general.
- 1362. — Questions of law or fact.
 - (1). In general.
 - (2). Injuries to tenants or occupants and their employees.
 - (3). Injuries to third persons.
 - (4). Injuries to property.
- 1363. — Instructions.
 - (1). In general.
 - (2). Injuries to tenants or occupants and their employees.
 - (3). Injuries to third persons.
 - (4). Injuries to property.
- 1364. — Verdict and findings.
- 1365. Remedies.
- 1366. — In general.
- 1367. — Damages.
- 1368. — Costs and attorney fees.

(K) CONSTRUCTIVE OR PARTIAL EVICTION.

- 1370. In general.
- 1371. Nature of eviction.

233. LANDLORD AND TENANT

V. ENJOYMENT AND USE OF PREMISES.(Cont'd)

- 1372. — In general.
- 1373. — Prior possession of tenant as necessary element.
- 1374. — Necessity of abandonment by tenant.
- 1375. Act or omission of landlord.
- 1376. — In general.
- 1377. — Interference with beneficial use or enjoyment of premises.
- 1378. — Failure of landlord to repair.
- 1379. — Entry by landlord to repair or improve.
- 1380. Acts of third persons in general.
- 1381. Entry under title paramount.
- 1382. Appropriation of premises to public use.
- 1383. Injury to or destruction of premises.
- 1384. Action by landlord to recover possession.
- 1385. Eviction of assignee or sublessee.
- 1386. Waiver by tenant.
- 1387. Recovery of possession by tenant.
- 1388. Actions.
- 1389. — In general.
- 1390. — Demand.
- 1391. — Parties.
- 1392. — Pleading.
- 1393. — Defenses.
- 1394. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 1395. — Trial.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Instructions.
- 1396. — Remedies.
 - (1). In general.
 - (2). Damages.
 - (3). Costs and attorney fees.

VI. DEPOSITS AND OTHER SECURITY BY TENANT.

- 1400. In general.
- 1401. Constitutional and statutory provisions.
- 1402. Duty to give.

VI. DEPOSITS AND OTHER SECURITY BY TENANT.(Cont'd)

- 1403. Duty to hold.
- 1404. Duty to return.
- 1405. — In general.
- 1406. — Cause to retain.
- 1407. Interest.
- 1408. Actions.
- 1409. — In general.
- 1410. — Time to sue and limitations.
- 1411. — Parties.
- 1412. — Pleading.
- 1413. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 1414. — Trial.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Instructions.
- 1415. — Remedies.
 - (1). In general.
 - (2). Damages.
 - (3). Costs and attorney fees.

VII. RENT.

(A) RIGHTS AND LIABILITIES.

1. IN GENERAL.

- 1420. Nature of rent.
- 1421. Constitutional and statutory provisions.
- 1422. Covenants and agreements to pay rent.
- 1423. — In general.
- 1424. — Performance or breach.
- 1425. Implied agreements to pay rent.

2. PARTICULAR GROUNDS OF DISCHARGE FROM LIABILITY.

- 1430. In general.
- 1431. Illegal lease.
- 1432. Satisfaction of conditions precedent.
- 1433. Frustration of purpose.
- 1434. Failure to give or take possession.
- 1435. Disturbance of possession of tenant.
- 1436. — In general.
- 1437. — By landlord.
- 1438. — By third parties.
- 1439. Condition of premises.

233. LANDLORD AND TENANT

VII. RENT.(Cont'd)

- 1440. — In general.
- 1441. — Unhealthy premises.
- 1442. — Heating, ventilation, and air conditioning.
- 1443. — Other specific conditions.
- 1444. — Covenants or agreements as conditions precedent or independent agreements.
- 1445. Change in condition of premises.
- 1446. Eviction.
- 1447. — In general.
- 1448. — Constructive or partial eviction.
- 1449. Appropriation of premises to public use.
- 1450. Injury to or destruction of premises.
- 1451. — In general.
- 1452. — Nature and extent of injury.
- 1453. Cancellation of lease.
- 1454. Vacation, surrender, or abandonment of premises.
- 1455. — In general.
- 1456. — Covenants and agreements.
- 1457. — Surrender by cotenant or sublessor.
- 1458. — Acceptance.
- 1459. — Surrender of keys.
- 1460. — Person to whom surrender may be made.
- 1461. — Assignment; substitution of tenants.
- 1462. — Operation and effect.
 - (1). In general.
 - (2). Continued liability for rent.
 - (3). Mitigation of damages.
- 1463. Holding over after expiration of term.
- 1464. Option to purchase premises.
- 1465. Recovery of possession by landlord.
- 1466. Release from liability.

3. AMOUNT.

- 1470. In general.
- 1471. Percentage rental agreements.
- 1472. — In general; earnings and receipts.
- 1473. — Sales.
- 1474. Increase or reduction of amount.
- 1475. — In general.
- 1476. — Necessity and sufficiency of consideration.

VII. RENT.(Cont'd)

- 1477. — Conditional increase or reduction.
- 1478. — Notice of increase or reduction.
- 1479. Tenant holding over.
- 1480. Appraisal and reappraisal.
For arbitration issues, see ALTERNATIVE DISPUTE RESOLUTION §501.

4. TIME OF ACCRUAL.

- 1490. In general.
- 1491. Acceleration clauses.
- 1492. Annual rent.
- 1493. Rent payable in advance or at the end of period.

5. PERSONS ENTITLED.

- 1495. In general.
- 1496. Transfer of rent or lease by landlord.

6. PERSONS LIABLE.

- 1500. In general.
- 1501. — In general.
- 1502. — Mortgagee or agent of tenant.
- 1503. Transfer of lease or agreement.
- 1504. — In general.
- 1505. — Liability of lessee after assignment.
- 1506. — Liability of assignee in general.
- 1507. — Assignment as security.
- 1508. — Effect of second assignment.
- 1509. — Reassignment.
- 1510. — Liability of mortgagee.
- 1511. Subletting.
- 1512. Apportionment.

7. ABATEMENT.

- 1515. In general.
- 1516. Abatement as dependent on lessee's possession and enjoyment of the premises.

8. PAYMENT.

- 1520. In general.
- 1521. Payment by making repairs.
- 1522. Payment by note or due bill.
- 1523. Application of payments.
- 1524. Recovery of payments.
- 1525. Payment in advance.
- 1526. Payment in crops or goods.

233. LANDLORD AND TENANT

(B) ACTIONS.

- 1530. Nature and form of remedy.
- 1531. — In general.
- 1532. — Assumpsit.
- 1533. Statutory provisions.
- 1534. Grounds.
- 1535. Conditions precedent in general.
- 1536. Demand.
- 1537. Defenses in general.
- 1538. Set-off and counterclaim.
- 1539. — In general.
- 1540. — Claims which may be subject of set-off, counterclaim, or recoupment in general.
- 1541. — Time when claim arose.
- 1542. — Damages arising from torts of landlord.
- 1543. — Damages for disturbance of tenant's possession and enjoyment of premises.
- 1544. — Damages arising from landlord's failure to repair or improve premises.
- 1545. — Claims for improvements and repairs.
- 1546. Persons who may sue.
- 1547. Persons who may be sued.
- 1548. Jurisdiction and venue.
- 1549. Time to sue and limitations.
- 1550. Parties.
- 1551. Attachment.
- 1552. — In general.
- 1553. — Defenses.
- 1554. — Grounds for attachment.
- 1555. — Property subject to attachment.
- 1556. — Time to sue.
- 1557. — Venue.
- 1558. — Parties.
- 1559. — Necessity and sufficiency of affidavit in general.
- 1560. — Amendment of affidavit or writ.
- 1561. — Bond.
- 1562. — Pleading.
- 1563. — Evidence.
- 1564. — Trial.
- 1565. — Judgment.
- 1566. — Wrongful attachment.
- 1567. — Levy.
- 1568. — Forthcoming bond.
- 1569. — Claims of third persons.

VII. RENT.(Cont'd)

- 1570. — Vacating, quashing, or setting aside.
- 1571. — Costs and attorney fees.
- 1572. Pleading.
- 1573. — In general.
- 1574. — Form and sufficiency of declaration or complaint.
- 1575. — Form and sufficiency of answer or cross-complaint in general.
- 1576. — Pleading, set-off, or counterclaim.
- 1577. — Affidavit of defense.
- 1578. — Reply.
- 1579. — Demurrer.
- 1580. — Amended and supplemental pleadings.
- 1581. — Issues, proof, and variance in general.
- 1582. — Evidence admissible under pleadings.
- 1583. Evidence.
- 1584. — In general.
- 1585. — Presumptions and burden of proof.
- 1586. — Admissibility.
- 1587. — Weight and sufficiency.
 - (1). In general.
 - (2). Set-off or counterclaim.
 - (3). To support finding, verdict, or judgment.
- 1591. Trial.
- 1592. — In general.
- 1593. — Questions for jury in general.
- 1594. — Submission to jury as determined by the evidence.
- 1595. — Instructions.
- 1596. Judgment.
- 1597. Damages.
- 1598. Execution.
- 1599. Costs and attorney fees.

(C) LIEN.

- 1600. In general.
- 1601. Contracts for liens.
- 1602. Statutory provisions.
- 1603. Right to lien.
- 1604. Creation and existence in general.
- 1605. Proceedings to perfect.
- 1606. Rent or advances secured.

233. LANDLORD AND TENANT

VII. RENT.(Cont'd)

- 1607. Subject-matter to which lien attaches.
- 1608. — In general.
- 1609. — Crops.
- 1610. — Property of third persons in general.
- 1611. — Property of subtenants or assignees.
- 1612. — Property subsequently acquired.
- 1613. — Proceeds of property.
- 1614. Time when lien attaches; duration of lien.
- 1615. Priorities.
- 1616. — In general.
- 1617. — Between landlord's lien for rent and claim for advances.
- 1618. — Between landlord's lien and lien of judgment or execution.
- 1619. Rights and remedies of creditors of tenant.
- 1620. — In general.
- 1621. — Actions.
- 1622. Assignment of lien.
- 1623. Removal or transfer of property in general.
- 1624. — In general.
- 1625. — Acts constituting removal.
- 1626. — Liabilities of tenant, and person taking possession.
- 1627. — Actions.
- 1628. — Penalties and actions therefor.
- 1629. Rights and liabilities of purchasers of property.
- 1630. — In general.
- 1631. — Rights and liabilities of bona fide purchasers in general.
- 1632. — Notice to purchaser.
- 1633. — Rights of purchaser against tenant.
- 1634. — Actions.
- 1635. Criminal responsibility for removal or transfer of property.
- 1636. — In general.
- 1637. — Indictment.
- 1638. Defenses.
- 1639. — In general.
- 1640. — Estoppel to assert lien.
- 1641. — Waiver.
- 1642. — Loss of lien in general.
- 1643. — Delay in enforcement.

VII. RENT.(Cont'd)

- 1644. — Discharge.
- 1645. Persons entitled to enforce lien.
- 1646. Persons as against whom lien may be enforced.
- 1647. Enforcement.
- 1648. — In general.
- 1649. — Distress.
- 1650. — Attachment.
- 1651. — Summary judgment and execution.
- 1652. — Actions.
 - (1). In general.
 - (2). Right of action; defenses.
 - (3). Time to sue; limitations.
 - (4). Venue.
 - (5). Parties.
 - (6). Pleadings and affidavits.
 - (7). Evidence.
 - (8). Trial.
 - (9). Judgment.
 - (10). Distribution of proceeds of sale.
 - (11). Costs and attorney fees.
- 1653. — Wrongful enforcement.

(D) DISTRESS.

- 1660. In general.
- 1661. Nature and scope of remedy.
- 1662. Statutory provisions.
- 1663. Right to distrain.
- 1664. — In general.
- 1665. — Existence of relation of landlord and tenant.
- 1666. — Right to distrain for charges incident to rent or relation.
- 1667. — Right to distrain as affected by time of accrual of rent.
- 1668. — Sale, removal, or use of property as giving right of immediate distress.
- 1669. Defenses and grounds of opposition.
- 1670. Persons entitled to distrain.
- 1671. — In general.
- 1672. — Transfer of rent or reversion.
- 1673. Persons as against whom distress may be enforced.
- 1674. Property subject to distress.
- 1675. — In general.
- 1676. — Property in possession of tenant in general.

233. LANDLORD AND TENANT

VII. RENT.(Cont'd)

- 1677. — Property in possession of tenant as agent.
- 1678. — Property in possession of tenant under contract of hiring.
- 1679. — Property not on the premises.
- 1680. Proceedings to distrain.
- 1681. — In general.
- 1682. — Demand as condition precedent.
- 1683. — Jurisdiction and venue.
- 1684. — Time to sue and limitations.
- 1685. — Parties.
- 1686. — Affidavit and other pleadings in general.
- 1687. — Amendment of affidavit or warrant.
- 1688. — Bond for warrant.
- 1689. — Form and contents of warrant.
- 1690. — Issuance, service, or levy of warrant.
- 1691. — Impounding and care of property.
- 1692. — Notice to tenant.
- 1693. — Bond to release levy.
- 1694. — Return of warrant.
- 1695. — Evidence.
- 1696. — Costs and attorney fees.
- 1697. — Trial.
- 1698. — Adjudication.
- 1699. — Execution.
- 1700. — Review.
- 1701. — Lien and priorities.
- 1702. — Defects and objections and waiver thereof.
- 1703. Claims by third persons.
- 1704. Sale or other disposition of property.
- 1705. Liabilities on bonds or other securities.
- 1706. — In general.
- 1707. — Liability on bond for warrant.
- 1708. — Liability on forthcoming bond.
- 1709. Wrongful distress.
- 1710. — In general.
- 1711. — Nature and form of remedy.
- 1712. — Right of action in general.
- 1713. — Ground of action.
- 1714. — Defenses.
- 1715. — Persons liable.
- 1716. — Pleading.
- 1717. — Evidence.
- 1718. — Damages.

VII. RENT.(Cont'd)

- 1719. — Trial.
- 1720. — Costs and expenses.

VIII. REENTRY AND RECOVERY OF POSSESSION BY LANDLORD.

(A) IN GENERAL.

- 1730. In general.
- 1731. Statutes and regulations.

(B) SELF-HELP.

- 1735. In general.
- 1736. What constitutes reentry.
- 1737. Reentry during absence of tenant.
- 1738. Conditions precedent to reentry.
- 1739. Right to reenter by force.

(C) ACTIONS FOR RECOVERY OF POSSESSION.

- 1740. In general.
- 1741. Nature and form.
- 1742. — In general.
- 1743. — Summary proceedings.
- 1744. Statutory provisions.
- 1745. — In general.
- 1746. — Summary proceedings.
- 1747. Right to maintain action and conditions precedent.
- 1748. — In general.
- 1749. — Landlord-tenant relationship.
- 1750. — Exhaustion of administrative remedies.
- 1751. — Demand or notice.
 - (1). In general.
 - (2). Necessity.
 - (3). Sufficiency.
 - (4). Service.
 - (5). Waiver.
- 1752. Grounds.
- 1753. — In general.
- 1754. — Summary proceedings.
- 1755. Defenses.
- 1756. — In general.
- 1757. — Set-off and counterclaim.
- 1758. Actions.
- 1759. — In general.
- 1760. — Jurisdiction.
- 1761. — Time to sue and limitations.
- 1762. — Parties.
 - (1). In general.

233. LANDLORD AND TENANT

VIII. REENTRY AND RECOVERY OF POSSESSION BY LANDLORD.(Cont'd)

- (2). Proper plaintiff.
- (3). — In general.
- (4). — Transfer of rent or reversion.
- (5). Proper defendant.
- (6). Joinder and intervention.
- 1763. — Pleading.
 - (1). In general.
 - (2). Allegations as to existence of relation of landlord and tenant.
 - (3). Description of parties.
 - (4). Verification.
 - (5). Amendments, motions, and objections.
- 1764. — Affidavit.
 - (1). In general.
 - (2). Counter-affidavits.
- 1765. — Summons.
 - (1). In general.
 - (2). Service and proof thereof.
- 1766. — Answer.
- 1767. — Issues, proof, and variance.
- 1768. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 1769. — Trial.
- 1770. — Judgment.
 - (1). In general.
 - (2). Findings.
 - (3). Warrant to dispossess, and execution thereof.
 - (4). Cure, redemption, and effect thereof.
- 1771. — Appeal.
 - (1). In general.
 - (2). Transfer of cause.
 - (3). Presentation and reservation of grounds for review.
 - (4). Scope and standards of review.
 - (5). Hearing and determination.
 - (6). Liabilities on bonds.
- 1772. — Review on certiorari.
- 1773. — Restitution.

VIII. REENTRY AND RECOVERY OF POSSESSION BY LANDLORD.(Cont'd)

- 1774. — Damages.
- 1775. — Costs and attorney fees.
- (D) ACTIONS FOR UNLAWFUL DETAINER.
- 1780. In general.
- 1781. Nature and form.
- 1782. Statutory provisions.
- 1783. Right of action and defenses.
- 1784. — In general.
- 1785. — Existence of relation of landlord and tenant.
- 1786. — Grounds of action.
- 1787. — Defenses and grounds of opposition in general.
- 1788. — Invalidity of lease.
- 1789. — Set-off and counterclaim.
- 1790. Actions.
- 1791. — In general.
- 1792. — Jurisdiction.
- 1793. — Summary proceedings.
- 1794. — Demand or notice.
 - (1). In general.
 - (2). Necessity and sufficiency.
 - (3). Service.
 - (4). Waiver.
- 1795. — Parties.
 - (1). In general.
 - (2). Proper plaintiffs.
 - (3). Proper defendants.
 - (4). Joinder and intervention.
- 1796. — Time to sue and limitations.
- 1797. — Summons or other process.
- 1798. — Complaint.
- 1799. — Answer.
- 1800. — Issues, proof, and variance.
- 1801. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 1802. — Pretrial bonds.
- 1803. — Trial.
- 1804. — Judgment and enforcement thereof.
- 1805. — Review.

233. LANDLORD AND TENANT

VIII. REENTRY AND RECOVERY OF POSSESSION BY LANDLORD.(Cont'd)

- 1806. — Damages and amount of recovery.
- 1807. — Costs and attorney fees.

(E) WRONGFUL DISPOSSESSION.

- 1810. In general.
- 1811. Right to maintain action.
- 1812. Grounds.
- 1813. — In general.
- 1814. — Trespass.
- 1815. — Retaliatory eviction.
- 1816. Defenses.
- 1817. Actions.
- 1818. — In general.
- 1819. — Pleading.
- 1820. — Evidence.
- 1821. — Trial.
- 1822. — Judgment.
- 1823. — Review.
- 1824. — Relief.
 - (1). In general.
 - (2). Damages.
 - (3). Costs and attorney fees.

IX. REGULATED RENTS.

(A) REGULATION OF RENTS IN GENERAL.

1. IN GENERAL.

- 1830. In general.
- 1831. Emergency or reasonable rent in general.
- 1832. Statutes and municipal regulations in general.
- 1833. — In general.
- 1834. — Power to regulate.
- 1835. — Purpose.
- 1836. — Construction.
- 1837. — Validity.
- 1838. — Proceedings for adoption, amendment, or repeal.
- 1839. — Retroactive operation.
- 1840. Administrative regulations.
- 1841. — In general.
- 1842. — Power to regulate.
- 1843. — Purpose.
- 1844. — Construction.
- 1845. — Validity.

IX. REGULATED RENTS.(Cont'd)

- 1846. — Proceedings for adoption, amendment, or repeal.
- 1847. — Retroactive operation.
- 1848. — Judicial review.

2. PERSONS AND PREMISES SUBJECT TO REGULATIONS.

- 1850. In general.
- 1851. Landlord and tenant relationship.
- 1852. Number of rental units.
- 1853. Owner's receipt of government financial incentives.
- 1854. Actual use or occupancy on crucial date.
- 1855. Business or commercial use.
- 1856. Place of public amusement.
- 1857. Statutory tenancy.
- 1858. Subtenancy.
- 1859. Other tenancies.
- 1860. New, additional, rehabilitated, or reverted housing.
- 1861. Waiver.
- 1862. Proceedings to determine exempt status.
- 1863. — In general.
- 1864. — Pleading.
- 1865. — Evidence.
- 1866. — Hearing and trial.
- 1867. — Findings, verdict, and judgment.
- 1868. — Review.

3. ESTABLISHMENT OF RENT.

- 1870. In general.
- 1871. Registration statements.
- 1872. — In general.
- 1873. — Purpose.
- 1874. — Necessity and sufficiency; effect of nonregistration.
- 1875. Fixation of reasonable rent in general.
- 1876. — In general.
- 1877. — Fair value or return.
- 1878. — Incumbrances.
- 1879. — Deduction of expenses, maintenance, and repairs.
- 1880. — Covenants and agreements.
 - (1). In general.
 - (2). Percentage rental agreements.
- 1881. Proceedings for fixation of reasonable rent.

233. LANDLORD AND TENANT

IX. REGULATED RENTS.(Cont'd)

- 1882. — In general.
- 1883. — Defenses.
- 1884. — Pleading.
- 1885. — Bill of particulars.
- 1886. — Presumptions and burden of proof.
- 1887. — Admissibility and weight of evidence.
- 1888. — Hearing and trial.
- 1889. — Findings, verdict, and judgment.
- 1890. — Review.
- 1891. — Costs and attorney fees.
- 1892. Rent ceilings.
- 1893. — In general.
- 1894. — Facilities, privileges, and services.
- 1895. — Evasion of rent ceilings.

4. ADJUSTMENT OF RENT.

- 1900. In general.
- 1901. Retroactive adjustment.
- 1902. Agreements for adjustment.
- 1903. Grounds for adjustment.
- 1904. — In general.
- 1905. — Vacancy or succession.
- 1906. — Changes in facilities or services.
- 1907. — Peculiar circumstances.
- 1908. — Value of property.
- 1909. — Increased costs and expenses.
- 1910. Proceedings for adjustment.
- 1911. — In general.
- 1912. — Conditions precedent.
- 1913. — Pleading.
- 1914. — Evidence.
- 1915. — Hearing and trial.
- 1916. — Verdict, findings, and judgment.
- 1917. — Review.
- 1918. — Costs and attorney fees.
- 1919. Notice of rent adjustment.
- 1920. — In general.
- 1921. — Statutory tenancy.
- 1922. Revocation of adjustment.

5. REMEDIES.

- 1925. In general.
- 1926. Amount of rent.
- 1927. Actions.

6. TERMINATION OF RENT CONTROL; RECONTROL.

- 1930. In general.
- 1931. Grounds.
- 1932. Proceedings.

(B) TRANSFER OF TENANCY RIGHTS.

- 1935. In general.
- 1936. Succession rights.
- 1937. Assignments.
- 1938. Subleases.

(C) PROHIBITED LANDLORD CONDUCT.

- 1940. In general.
- 1941. Failure to renew.
- 1942. Rent overcharges.
- 1943. Service reductions.
- 1944. Harassment.
- 1945. Proceedings.
- 1946. — In general.
- 1947. — Conditions precedent.
- 1948. — Time to sue and limitations.
- 1949. — Pleading.
- 1950. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 1951. — Hearing and trial.
- 1952. — Findings, verdict, and judgment.
- 1953. — Relief.
- 1954. — Review.
- 1955. — Costs and attorney fees.
- 1956. Offenses.

(D) RECOVERY OF POSSESSION.

1. IN GENERAL.

- 1960. In general.
- 1961. Statutes and ordinances.
- 1962. — In general.
- 1963. — Validity.
- 1964. — Construction.
- 1965. Administrative regulations.

2. PROTECTED PERSONS AND PREMISES.

- 1970. In general.
- 1971. Business or commercial space.
- 1972. Occupancy for dwelling purposes.

233. LANDLORD AND TENANT

IX. REGULATED RENTS.(Cont'd)

- 1973. Landlord and tenant relationship.
- 1974. Statutory tenants.
- 1975. Subtenants, licensees, or other persons.
- 1976. Veterans.
- 1977. Waiver.

3. GROUNDS FOR RECOVERY OR NON-RECOVERY.

- 1980. In general.
- 1981. Landlord's need.
- 1982. — In general.
- 1983. — Altering or demolishing building.
- 1984. — Immediate and compelling necessity of landlord.
- 1985. — Immediate family of landlord.
- 1986. — One or two family dwelling.
- 1987. — Personal use and occupancy by landlord.
- 1988. — Landlord's equity or ownership.
- 1989. — Matched lease.
- 1990. — Withdrawal of accommodations from rental market.
- 1991. Purchase of premises subject to regulations.
- 1992. Violation of tenancy.
- 1993. — In general.
- 1994. — Unauthorized assignment or subletting.
- 1995. — Illegal or unauthorized use or occupancy.
- 1996. — Late payment or nonpayment of rent.
- 1997. — Nuisance.

4. PROHIBITED LANDLORD CONDUCT.

- 2000. In general.
- 2001. Wrongful dispossession.
- 2002. — In general.
- 2003. — Landlord's good faith.
 - (1). In general.
 - (2). Retaliatory eviction.
- 2004. Offenses and prosecutions.

5. PROCEDURE.

- 2010. In general.
- 2011. Notice.
- 2012. — In general.
- 2013. — Notice to cure violation.

IX. REGULATED RENTS.(Cont'd)

- 2014. — Notice to terminate tenancy or surrender possession.
 - (1). In general.
 - (2). Service of notice.
 - (3). Sufficiency of notice.
- 2015. Administrative proceedings.
- 2016. — In general.
- 2017. — Certificate of eviction.
 - (1). In general.
 - (2). Necessity.
 - (3). Operation and effect.
- 2018. Actions.
- 2019. — In general.
- 2020. — Jurisdiction.
- 2021. — Time for proceedings.
- 2022. — Parties.
- 2023. — Pleading and process.
- 2024. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
 - (5). — In general.
 - (6). — Landlord's need.
 - (7). — Violation of tenancy.
 - (8). — Wrongful dispossession.
- 2025. — Trial.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Instructions.
- 2026. — Judgment and remedies.
 - (1). In general.
 - (2). Damages and penalties.
 - (3). Costs and attorney fees.
- 2027. — Review.

X. PUBLIC AND PUBLICLY SUBSIDIZED HOUSING.

(A) IN GENERAL.

- 2030. In general.
- 2031. Constitutions, statutes, and ordinances.
- 2032. Administrative regulations.
- 2033. Housing authorities and programs.

(B) TENANCY.

- 2040. In general.
- 2041. Eligibility.

233. LANDLORD AND TENANT

X. PUBLIC AND PUBLICLY SUBSIDIZED HOUSING.(Cont'd)

- 2042. — In general.
- 2043. — Succession rights.

(C) OPERATION AND MAINTENANCE.

- 2050. In general.
- 2051. Project initiation and termination.
- 2052. Discrimination.
- 2053. Public access.
- 2054. Proceedings.

(D) RENT.

- 2060. In general.
- 2061. Amount.
- 2062. Proceedings.
- 2063. Government subsidies.
- 2064. — In general.
- 2065. — Eligibility and amount.
- 2066. — Proceedings.

(E) TERMINATION OF TENANCY; EVICTION.

- 2070. In general.
- 2071. Grounds for recovery or nonrecovery.
- 2072. — In general.
- 2073. — Violation of tenancy.
 - (1). In general.
 - (2). Fraud in obtaining lease.
 - (3). Nonpayment of rent.
 - (4). Unauthorized occupants or visitors.
 - (5). Illegal conduct.
- 2074. — Defenses.
 - (1). In general.
 - (2). Landlord's non-compliance with requirements.
 - (3). Innocence; lack of knowledge.
 - (4). Retaliatory eviction.
 - (5). Waiver of violation.
- 2075. Proceedings.
- 2076. — In general.
- 2077. — Notice.
- 2078. — Pleading and process.
- 2079. — Evidence.
- 2080. — Hearing.
- 2081. — Remedies.
- 2082. — Review.

XI. MOBILE HOMES AND MOBILE HOME PARKS.

- 2090. In general.
- 2091. Constitutions, statutes, and ordinances.
- 2092. — In general.
- 2093. — Purpose.
- 2094. — Construction.
- 2095. — Validity.
- 2096. Administrative regulations.
- 2097. — In general.
- 2098. — Purpose.
- 2099. — Construction.
- 2100. — Validity.
- 2101. Leases and agreements.
- 2102. Landlord's title and reversion.
- 2103. Nature and extent of tenancy.
- 2104. Assignment and subletting.
- 2105. Extensions and renewals.
- 2106. Options to purchase or sell.
- 2107. Termination.
- 2108. Use and enjoyment of premises.
- 2109. — In general.
- 2110. — Park rules and regulations.
 - (1). In general.
 - (2). Regulation of type and quality of home; appliances.
- 2111. — Common areas and facilities.
- 2112. — Repairs and improvements.
- 2113. — Liability for dangerous or defective conditions.
 - (1). In general.
 - (2). Injuries to third parties.
 - (3). Actions.
 - (4). — In general.
 - (5). — Pleading.
 - (6). — Evidence.
 - (7). — Trial.
 - (8). — Judgment.
 - (9). — Relief.
- 2114. — Eviction and abandonment.
- 2115. Rent and other charges.
- 2116. — In general.
- 2117. — Rent control.
- 2118. — Installation and other incidental charges.
- 2119. — Actions.
 - (1). In general.
 - (2). Pleading.
 - (3). Evidence.

233. LANDLORD AND TENANT

XI. MOBILE HOMES AND MOBILE HOME PARKS.(Cont'd)

- (4). Trial.
- (5). Judgment.
- (6). Relief.
- 2120. — Liens and distraint.
- 2121. Reentry and recovery of possession; termination.
- 2122. — In general.
- 2123. — Grounds in general.
- 2124. — Change in use of park.
- 2125. — Defenses; retaliatory eviction.
- 2126. — Actions.
 - (1). In general.
 - (2). Notice.
 - (3). Pleading.
 - (4). Evidence.
 - (5). Trial.
 - (6). Judgment.
 - (7). Relief.
- 2127. Sale or transfer of home, limitations on.

XII. RENTING ON SHARES.

- 2140. Nature of contract.
- 2141. Statutory provisions.
- 2142. Requisites and validity of contracts.
- 2143. Construction and operation of contracts in general.
- 2144. Nature of relation created.
- 2145. Mode of cultivation of land.
- 2146. Rights and liabilities as to land.
- 2147. Rights and liabilities as to crops.
- 2148. — In general.
- 2149. — Title to and possession of crop before division.
- 2150. — Tenancy in common and joint tenancy as to crops.
- 2151. — Waiver of rights by landlord.
- 2152. — Conversion.
- 2153. Mode of division of crops.
- 2154. Liens.
 - 2155. — In general.
 - 2156. — Extent of lien and priorities.
 - 2157. — Waiver or loss of lien.
 - 2158. — Enforcement of lien.
 - 2159. — Lien of cropper.
- 2160. Reentry and recovery of possession by landlord.

XII. RENTING ON SHARES.(Cont'd)

- 2161. Rights and liabilities as to third persons.
- 2162. — In general.
- 2163. — Rights of assignee of landlord.
- 2164. Actions between parties.
- 2165. — In general.
- 2166. — Actions by tenant against landlord in general.
- 2167. — Damages.
- 2168. — Actions by landlord against tenant in general.
- 2169. — Demand.
- 2170. — Pleading.
- 2171. — Evidence.
- 2172. — Attachment and distress.
- 2173. — Trial.
- 2174. Actions by or against third persons.
- 2175. Offenses.

234. LARCENY

SUBJECTS INCLUDED

Taking and removing, with intent to steal, personal property in possession, actual or constructive, of another, without force or intimidation, or any false personation or pretense

Attempts to commit such offenses

Nature and elements of crimes of larceny or theft in general, and of grand or petit larceny, larceny from the person or from a dwelling or other building or structure, etc.

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Conviction of larceny on indictment for other offense, see INDICTMENT AND INFORMATION

Embezzlement of money or goods by one having possession thereof, see EMBEZZLEMENT

234. LARCENY

Larceny by swindle, cheat, trick, or device, see FALSE PRETENSES

Obtaining money or goods by—

Cheating or false pretenses, see FALSE PRETENSES

False personation, see FALSE PRETENSES

Other offenses, theft or intent to steal as an element of, see BURGLARY, ROBBERY

Receiving property stolen, see RECEIVING STOLEN GOODS

I. OFFENSES AND RESPONSIBILITY THEREFOR, ⚡1-27.

II. PROSECUTION AND PUNISHMENT, ⚡28-89.

(A) INDICTMENT AND INFORMATION, ⚡28-40.

(B) EVIDENCE, ⚡41-66.

(C) TRIAL AND REVIEW, ⚡68-83.

(D) SENTENCE AND PUNISHMENT, ⚡86-89.

I. OFFENSES AND RESPONSIBILITY THEREFOR.

1. Nature and elements in general.
2. Statutory provisions.
3. Intent.
 - (1). In general.
 - (2). Existence at time of taking.
 - (3). Claim of title or right.
 - (4). Intent to convert or acquire property and deprive owner thereof.
4. Property subject of larceny.
5. — In general.
6. — Value.
7. — Ownership.
8. — Possession or custody.
9. — Larceny by owner from bailee.
10. — Property lost or mislaid.
11. Taking.

Larceny by swindle, cheat, trick, or device, see FALSE PRETENSES.
12. — In general.
13. — Consent of owner.
15. — Conversion by trustee, bailee, agent, or servant.
 - (1). In general.
 - (2). Borrowers or hirers of horses or other property.
 - (3). Servants and agents.

I. OFFENSES AND RESPONSIBILITY THEREFOR.(Cont'd)

16. — Property lost or mislaid.
17. Asportation.
18. Secreting, withholding, or appropriation of property.
19. Larceny from the person.
20. Larceny from dwelling house.
21. Larceny from shop, store, or other building.
22. Bringing into state property stolen elsewhere.
23. Grand or petit larceny, and degrees.
24. Attempts.
25. Possession of implements for commission of larceny.
26. Defenses.
27. Persons liable.

II. PROSECUTION AND PUNISHMENT.

(A) INDICTMENT AND INFORMATION.

28. Requisites and sufficiency in general.
 - (1). Sufficiency in general.
 - (2). Requisites in general.
 - (3). Place of offense.
 - (4). Grade or degree of offense.
29. Intent.
30. Description of property.
 - (1). In general.
 - (2). Pocketbooks and contents.
 - (3). Clothing and jewelry.
 - (4). Horses, mules, and asses.
 - (5). Cattle.
 - (6). Swine.
 - (7). Drafts, checks, notes, and other writings.
 - (8). Money in general.
 - (9). Coin.
 - (10). Currency and treasury and national bank notes.
 - (11). Bank notes.
31. Value of property.
32. Ownership of property.
 - (1). In general.
 - (2). Necessity of alleging ownership.
 - (3). Property of husbands and wives.
 - (4). Property of principals, agents, partnerships, and joint or several owners.

234. LARCENY

II. PROSECUTION AND PUNISHMENT.(Cont'd)

- (5). Property in possession of bailee.
- (6). Property of corporations and business organizations.
- (7). Property of landlords and tenants.
- (8). Property belonging to decedents' estates.
- (9). Ownership unknown.
- 33. Possession or custody of property.
- 34. Taking and asportation in general.
- 35. Secreting, withholding, or appropriation of property.
- 36. Larceny by trustee, bailee, agent, or servant.
- 37. Larceny from the person.
- 38. Larceny from dwelling house, shop, store, or other building.
- 39. Bringing into state property stolen.
- 40. Issues, proof, and variance.
 - (1). In general.
 - (2). Matters to be proved.
 - (3). Evidence admissible under pleadings.
 - (4). Variance in general.
 - (5). Variance as to time and place of taking.
 - (6). Variance as to description of property in general.
 - (7). Variance as to description of animals.
 - (8). Variance as to description of money, currency, treasury certificates, and bank notes.
 - (9). Variance as to ownership of property in general.
 - (10). Variance as to ownership of property by principals, agents, partnerships, and joint or several owners.
 - (11). Variance as to possession and custody of property.

(B) EVIDENCE.

- 41. Presumptions and burden of proof.
- 42. Admissibility.
- 43. — In general.
- 44. — Intent.
- 45. — Identity of property.
- 46. — Value of property.
- 47. — Ownership of property.

II. PROSECUTION AND PUNISHMENT.(Cont'd)

- 48. — Taking, asportation, and appropriation of property.
- 49. — Identity, presence, and acts of accused.
- 50. — Incriminating circumstances in general.
- 50.5. — Possession by accused of implements for commission of larceny.
- 51. — Possession by accused of property stolen.
 - (1). In general.
 - (2). Explanation of possession.
- 52. — Matters of defense.
- 53. — Rebuttal.
- 54. Weight and sufficiency.
- 55. — In general.
- 56. — Corpus delicti.
- 57. — Intent.
- 58. — Identity of property.
- 59. — Value of property.
- 60. — Ownership and possession or custody of property.
- 61. — Situation or place of taking of property.
- 62. — Taking and asportation of property in general.
 - (1). In general.
 - (2). Consent of owner.
- 63. — Conversion, secreting, withholding, or appropriation of property.
- 64. — Effect of possession of property stolen.
 - (5). In general.
 - (1). Presumptions arising from possession in general.
 - (2). Conclusiveness of presumptions.
 - (3). Remoteness of possession.
 - (4). Exclusiveness of possession.
 - (5). Identity of property.
 - (6). Explanation of possession.
 - (7). Possession accompanied by other incriminating circumstances.
 - (8). Sufficiency of proof of defendant's possession.
- 65. — Grade or degree of offense.
- 66. — Attempts.

(C) TRIAL AND REVIEW.

- 68. Questions for jury.

237. LIBEL AND SLANDER

II. PROSECUTION AND PUNISHMENT.(Cont'd)

- (1). In general.
 - (2). Intent.
 - (3). Possession of property stolen.
 - 69. Instructions.
 - 70. — In general.
 - (1). In general.
 - (2). Instructions defining offense.
 - (3). Applicability to issues and evidence.
 - 71. — Intent.
 - (1). In general.
 - (2). Existence at time of taking.
 - (3). Taking for temporary use or purpose.
 - (4). Taking under claim of right.
 - 72. — Nature and value of property.
 - 73. — Ownership and possession or custody of property.
 - 74. — Situation or place of taking of property.
 - 75. — Taking and asportation of property in general.
 - (1). In general.
 - (2). Consent of owner.
 - 76. — Conversion, secreting, withholding, or appropriation of property.
 - 77. — Effect of possession of property stolen, and of explanation thereof.
 - (1). In general.
 - (2). Applicability to issues and evidence.
 - (3). Issues and evidence requiring instructions as to possession of property.
 - (4). Explanation of possession.
 - 78. — Matters of defense.
 - 79. — Grade or degree of offense.
 - 80. — Punishment.
 - 81. Verdict.
 - 82. — In general.
 - 83. — Finding as to value of property.
- (D) SENTENCE AND PUNISHMENT.
- 86. Form and requisites of sentence.
 - 87. Nature and extent of punishment.
 - 88. — In general.
 - 89. — Mitigation on restitution or recovery of property stolen.

237. LIBEL AND SLANDER

SUBJECTS INCLUDED

Malicious defamation, by words spoken, written, or printed, or by signs, pictures, etc., injurious to a person in his general reputation, or exposing a living person, or the memory of one deceased, to hatred, contempt, or ridicule, or prejudicial to a person in his profession, trade, occupation, employment, or office, or otherwise causing one special damage, or injurious to one's interest in property, real or personal, or tending to provoke a breach of the peace

Justification or excuse for or mitigation of such defamation

Nature and extent of liability of those speaking or publishing such defamatory words, etc.

Actions for damages therefor

Criminal responsibility for libels in general, and prosecution and punishment thereof as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Blasphemous and obscene libels, see OBSCENITY, and CRIMINAL LAW ¶45.20

- I. WORDS AND ACTS ACTIONABLE, AND LIABILITY THEREFOR, ¶1-33.
- II. PRIVILEGED COMMUNICATIONS, AND MALICE THEREIN, ¶34-51.
- III. JUSTIFICATION AND MITIGATION, ¶52-67.
- IV. ACTIONS, ¶68-129.
 - (A) RIGHT OF ACTION AND DEFENSES, ¶68-76.
 - (B) PARTIES, PRELIMINARY PROCEEDINGS, AND PLEADING, ¶77-100.
 - (C) EVIDENCE, ¶101-112.
 - (D) DAMAGES, ¶113-121.
 - (E) TRIAL, JUDGMENT, AND REVIEW, ¶123-129.
- V. SLANDER OF PROPERTY OR TITLE, ¶130-140.
- VI. CRIMINAL RESPONSIBILITY, ¶141-162.
 - (A) OFFENSES, ¶141-150.
 - (B) PROSECUTION AND PUNISHMENT, ¶151-162.

237. LIBEL AND SLANDER

I. WORDS AND ACTS ACTIONABLE, AND LIABILITY THEREFOR.

1. Nature and elements of defamation in general.
- 1.5. Constitutional and statutory provisions.
- 1.6. What law governs.
- 1.7. Preemption.
2. Intent.
3. Malice.
4. — In general.
5. — Implied.
6. Actionable words in general.
 - (1). In general.
 - (2). Imputation of falsehood, dishonesty, or fraud.
 - (3). Imputation of indebtedness or delinquency in paying debts.
 - (4). Imputation of inebriety or mental derangement.
 - (5). Imputation of libelous or slanderous acts.
 - (6). Insults leading to breach of the peace.
7. Words imputing crime and immorality.
 - (1). In general.
 - (2). Nature of crime and punishment.
 - (3). Arrest and imprisonment.
 - (4). Intent or attempt to commit crime.
 - (5). Abortion.
 - (6). Assault, burglary, robbery and homicide.
 - (7). Arson and burning of buildings.
 - (8). Bigamy.
 - (9). Conspiracy and blackmail.
 - (10). Crimes against the government and violation of laws concerning elections and the mail.
 - (11). Disorderly house, gambling, and intoxicating liquors.
 - (12). Forgery, false pretenses, and breach of trust.
 - (13). Larceny.
 - (14). Perjury and subornation of perjury.
 - (15). Violation of food laws.
 - (16). Want of chastity or sexual crimes in general.
 - (17). Adultery.
 - (18). Fornication, incest, and rape.

I. WORDS AND ACTS ACTIONABLE, AND LIABILITY THEREFOR.(Cont'd)

- (19). Prostitution.
8. Words imputing contagious or venereal disease.
9. Words tending to injure in profession or business.
 - (1). In general.
 - (2). Physicians and dentists.
 - (3). Attorneys at law.
 - (4). Clergymen.
 - (5). Teachers and other educators.
 - (6). Contractors.
 - (7). Merchants, tradesmen, and manufacturers.
 - (8). Authors and newspapers.
 - (9). Brokers and advertising agents.
10. Words imputing unfitness for or misconduct or criminal acts in office or employment.
 - (5). In general.
 - (1). Public officers in general.
 - (2). Legislative officers.
 - (3). Executive officers and employees.
 - (4). Judicial officers.
 - (5). Corporation and association officers.
 - (6). Employees.
11. Words actionable as causing special damage.
 - 11.1. — In general.
12. — Nature and meaning in general.
13. — Nature and extent of injury.
14. Words written or printed, signs, pictures, and other representations.
15. — In general.
16. — Exposing person to hatred, contempt, or ridicule.
17. — Causing person to be shunned or avoided.
18. — Tending to injure in business or occupation.
19. Construction of language used.
20. Certainty.
 - 20.1. — In general.
21. — Person defamed.
22. — Matter imputed.
23. Publication.
 - 23.1. — In general.
24. — Slander.

237. LIBEL AND SLANDER

I. WORDS AND ACTS ACTIONABLE, AND LIABILITY THEREFOR.(Cont'd)

- 25. — Libel.
- 26. Repetition.
- 26.1. — In general.
- 27. — By same person.
- 28. — By others in general.
- 29. — As hearsay or rumor.
- 30. Falsity.
- 31. Injury from defamation.
- 32. — In general.
- 33. — Presumption as to damage; special damages.

II. PRIVILEGED COMMUNICATIONS, AND MALICE THEREIN.

- 34. Nature and grounds of privilege in general.
- 35. Absolute privilege.
- 36. — In general.
- 37. — Legislative proceedings.
- 38. — Judicial proceedings.
 - (1). In general.
 - (2). Complaints, affidavits, or motions.
 - (3). Pleadings.
 - (4). Evidence.
 - (5). Briefs, arguments, and statements of counsel.
- 39. — Official acts, reports, and records.
- 40. Qualified privilege.
- 41. — In general.
- 42. — Reports.
 - (.5). In general.
 - (1). Judicial proceedings.
 - (2). Executive and legislative proceedings and investigations.
 - (3). Proceedings of churches and other societies or associations.
- 43. — Discharge of duty to public.
- 44. — Discharge of duty to others.
 - (1). In general.
 - (2). As to character of suitor or lover.
 - (3). As to character of employee.
 - (4). Reports of mercantile standing by agencies or others.
- 45. — Common interest in subject-matter.
 - (1). In general.
 - (2). Common business interest.
 - (3). Common membership in church.
- 46. — Self-defense.

II. PRIVILEGED COMMUNICATIONS, AND MALICE THEREIN.(Cont'd)

- 47. — Request or provocation by person injured.
- 48. Criticism and comment on public matters; public figures.
 - (1). In general.
 - (2). Character and conduct of public officers and employees.
 - (3). Character of candidates for office.
- 49. Publication and discussion of news.
- 50. Good faith in exercise of privilege or right.
- 50.5. Exceeding privilege or right.
- 51. Existence and effect of malice.
 - (1). In general.
 - (2). Statements made in judicial and official proceedings.
 - (3). Reports of judicial and official proceedings.
 - (4). Discharge of duty to others or to public and common interest in subject-matter.
 - (5). Criticism and comment on public matters and publication of news.

III. JUSTIFICATION AND MITIGATION.

- 52. Nature and grounds in general.
- 53. Constitutional and statutory provisions.
- 54. Truth as justification in general.
- 55. Truth of part of defamatory matter; substantial truth.
- 56. Facts constituting justification.
 - (1). In general.
 - (2). Belief as to truth.
 - (3). Rumors, other publications, and reputation of person defamed.
 - (4). Retraction or apology.
- 57. Effect of failure to establish justification.
- 58. Grounds of mitigation.
- 59. — In general.
- 60. — Matter in justification.
- 61. — Bad character of person defamed.
- 62. — Absence of malice.
- 63. — Provocation and passion.
- 64. — Publications by and liability of others:
- 65. — Absence of special damage.

237. LIBEL AND SLANDER

III. JUSTIFICATION AND MITIGATION.(Cont'd)

- 66. — Retraction, apology, and reparation.
- 67. Effect of mitigation.

IV. ACTIONS.

(A) RIGHT OF ACTION AND DEFENSES.

- 68. Nature and form of remedy.
- 69. Grounds of action.
- 70. Conditions precedent.
- 71. Defenses in general.
- 72. Abatement or survival on death of party.
- 73. Persons entitled to sue.
- 74. Persons liable.
- 75. Jurisdiction and venue.
- 76. Time to sue and limitations.
See also LIMITATION OF ACTIONS.

(B) PARTIES, PRELIMINARY PROCEEDINGS, AND PLEADING.

- 77. Parties.
- 78. Process and appearance.
- 79. Declaration, complaint, or petition.
- 79.1. — In general.
- 80. — Form and requisites in general.
- 81. — Inducement and extrinsic matter.
- 82. — Colloquium.
- 83. — Intent and malice.
- 84. — Publication.
- 85. — Setting out defamatory matter.
- 86. — Innuendoes.
 - (.5). In general.
 - (1). Office and functions.
 - (2). Necessity and propriety.
 - (3). Sufficiency.
 - (4). Conclusiveness and effect of innuendoes.
- 87. — Falsity of defamatory matter.
- 88. — Damage in general.
- 89. — Special damage.
 - (.5). In general.
 - (1). Necessity.
 - (2). Sufficiency in general.
 - (3). Sufficiency as to injury to business or profession.
- 90. Plea or answer.
- 90.1. — In general.
- 91. — Matters of defense in general.
- 92. — Notice of special matter.
- 93. — Privilege.

IV. ACTIONS.(Cont'd)

- 94. — Justification.
 - (1). In general.
 - (2). Admitting the publication.
 - (3). Setting forth facts in general.
 - (4). Justifying particular charges.
 - (5). Partial justification.
- 95. — Mitigation.
- 96. Replication or reply and subsequent pleadings.
- 97. Demurrer.
- 98. Amended and supplemental pleadings.
- 99. Bill of particulars.
- 100. Issues, proof, and variance.
 - (.5). In general.
 - (1). Issues raised by and evidence admissible under pleadings in general.
 - (2). Special damages.
 - (3). Justification.
 - (4). Mitigation.
 - (5). Privilege.
 - (6). Good character and reputation.
 - (7). Matters to be proved.
 - (8). Variance.

(C) EVIDENCE.

- 101. Presumptions and burden of proof.
 - (1). In general.
 - (2). Meaning of language.
 - (3). Publication and responsibility therefor.
 - (4). Privilege.
 - (5). Justification and mitigation.
- 102. Admissibility.
- 103. — In general.
- 104. — Intent and malice.
 - (1). In general.
 - (2). Prior state of feelings between plaintiff and defendant.
 - (3). Other publications in general.
 - (4). Other publications made after action commenced.
 - (5). Other publications not actionable.
 - (6). Publications against third persons.
 - (7). Refusal to retract.
- 105. — Matters of inducement and extrinsic facts.
 - (1). In general.

237. LIBEL AND SLANDER

IV. ACTIONS.(Cont'd)

- (2). Statements and publications other than those complained of.
- (3). Meaning of language used.
- (4). Persons defamed.
- 106. — Publication.
- 107. — Extent of injury in general.
 - (1). In general.
 - (2). Extent of circulation.
 - (3). Worldly position and pecuniary condition of parties.
 - (4). Exemplary damages.
- 108. — Special damage.
- 109. — Privilege.
- 110. — Justification.
 - (1). In general.
 - (2). Rumor and general belief as to truth of defamatory matter.
 - (3). Character and reputation of person defamed.
- 111. — Mitigation.
- 112. Weight and sufficiency.
 - (1). In general.
 - (2). Intent, malice, or good faith.
 - (3). Justification and mitigation.

(D) DAMAGES.

- 113. Measure in general.
- 114. Nominal or substantial damages.
- 115. Elements of compensation.
- 116. — In general.
- 117. — Injury to reputation.
- 118. — Special damages.
- 119. — Mental suffering and emotional distress.
- 120. Exemplary.
 - (1). In general.
 - (2). On ground of malice or recklessness.
- 121. Amount awarded.
 - (5). In general.
 - (1). Libel.
 - (2). Slander.

(E) TRIAL, JUDGMENT, AND REVIEW.

- 123. Questions for jury.
 - (1). In general.
 - (2). Construction of defamatory language in general.

IV. ACTIONS.(Cont'd)

- (3). Construction of language imputing crime.
- (4). Construction of language imputing unchastity or immorality.
- (5). Person defamed.
- (6). Good faith, intent, and malice in general.
- (7). Justification and mitigation.
- (8). Privilege.
- (9). Damages in general.
- (10). Exemplary damages.
- 124. Instructions.
 - (1). In general.
 - (2). Burden of proof and purpose and effect of evidence.
 - (3). Intent, malice, and good faith in general.
 - (4). Character and construction of defamatory language.
 - (5). Injury from defamation.
 - (6). Privilege.
 - (7). Justification and mitigation.
 - (8). Damages.
- 125. Verdict and findings.
- 126. New trial.
- 127. Judgment.
- 128. Appeal and error.
- 129. Costs.

V. SLANDER OF PROPERTY OR TITLE.

- 130. Nature and elements in general.
- 131. Intent and malice.
- 132. Actionable words or conduct relating to title.
- 133. Actionable words or conduct relating to quality or value.
- 134. Falsity.
- 135. Injury from slander.
- 136. Defenses.
- 137. Persons entitled to sue.
- 138. Persons liable.
- 139. Actions.
- 140. Slander to try title or action of jactitation.

VI. CRIMINAL RESPONSIBILITY.

(A) OFFENSES.

- 141. Nature and elements in general.

237. LIBEL AND SLANDER

VI. CRIMINAL RESPONSIBILITY. (Cont'd)

- 142. Constitutional and statutory provisions.
- 143. Intent and malice.
- 144. Oral defamation.
- 145. Libelous words and acts.
- 146. Publication of defamatory matter.
- 147. Furnishing libelous information for publication.
- 148. Privileged communication.
- 149. Justification.
- 150. Persons liable.

(B) PROSECUTION AND PUNISHMENT.

- 151. Jurisdiction and venue.
- 152. Indictment and information.
 - (1). In general.
 - (2). Inducement, extrinsic matters, colloquium, and innuendoes.
 - (3). Intent and malice.
 - (4). Publication.
 - (5). Issues, proof, and variance.
- 153. Evidence.
- 153.1. — In general.
- 154. — Presumptions and burden of proof.
- 155. — Admissibility.
- 156. — Weight and sufficiency.
- 158. Questions for jury.
- 159. Instructions.
- 160. Verdict.
- 162. Sentence and punishment.

238. LICENSES

SUBJECTS INCLUDED

Permission required by public authority for various occupations and pursuits, and registration, certification, etc., incident thereto

Fees for such licenses, certificates, or registration, and taxes imposed on the privileges granted or the occupations, exhibitions, etc., permitted

Permission by owners of real property to persons having no estate therein to do some act thereon

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Indian tribes, see INDIANS, ¶226

Injuries to licensees; liability of landowners or tenants, see NEGLIGENCE, LANDLORD AND TENANT, RAILROADS

Particular occupations or acts, or dealings in property subject to particular regulations, licenses for, see HEALTH, INNKEEPERS, INTOXICATING LIQUORS, PUBLIC AMUSEMENT AND ENTERTAINMENT, and other specific topics

Patent, copyright, and trademark licenses, see PATENTS, COPYRIGHTS AND INTELLECTUAL PROPERTY, TRADEMARKS

Securities transactions, see also SECURITIES REGULATION

I. FOR OCCUPATIONS AND PRIVILEGES, ¶1-42.

II. IN RESPECT OF REAL PROPERTY, ¶43-64.

I. FOR OCCUPATIONS AND PRIVILEGES.

- 1. Nature of license for or tax on occupation or privilege.
- 2. Power to license or tax.
- 3. — In general.
- 4. — United States.
- 5. — States.
 - 5.1. — Counties.
 - 5.5. — Municipal corporations.
- 6. — Delegation of power.
- 7. Constitutionality and validity of acts and ordinances.
 - (1). In general.
 - (2). Equality and uniformity in general.
 - (3). Uniformity as to occupations or privileges of same class.
 - (4). Classification according to amount of business or capital.
 - (5). Different localities.
 - (6). Discrimination against nonresidents.
 - (7). Taxation according to value.
 - (8). Double taxation.
 - (9). Reasonableness of fees.
- 8. Statutory provisions.
 - (.5). In general.

238. LICENSES

I. FOR OCCUPATIONS AND PRIVILEGES.(Cont'd)

- (1). Construction and operation in general.
- (2). Amendment or repeal of particular statutes.
9. Municipal ordinances.
 - (.5). In general.
 - (1). Construction and operation in general.
 - (2). Amendment or repeal of particular ordinances.
10. Subjects of license or tax.
- 10.1. — In general.
11. — Occupations and employments in general.
 - (1). In general.
 - (3). Agents in general.
 - (5). Contractors.
Excludes farm labor contractors, see LABOR AND EMPLOYMENT XVI.
 - (7). Employment agencies.
12. — Manufactures.
13. — Mechanical trades and pursuits.
14. — Vehicles and means of transportation.
 - (1). In general.
 - (2). Vehicles for carriage of passengers.
 - (3). Vehicles for carriage of goods in general.
 - (4). Vehicles used by merchants for delivery of goods.
15. — Mercantile business in general.
Sales, use, gross receipts, and similar general taxes, see TAXATION.
 - (1). In general.
 - (2). Transient or itinerant dealers, merchants, traders, or vendors.
 - (3). Sale of goods by manufacturer.
 - (4). Sales of foreign merchandisc.
 - (5). Sales to employes or tenants.
 - (6). Canvassers, drummers, or traveling salesmen.
 - (7). Merchants dealing in or giving trading stamps to customers.
 - (8). Chain stores and department stores.
16. — Dealings in particular articles.
Selective sales and use taxes, see TAXATION.
 - (1). In general.

I. FOR OCCUPATIONS AND PRIVILEGES.(Cont'd)

- (.5). Automobile dealers.
- (9). Dealers in oils or products thereof.
Gasoline or motor fuel tax, see TAXATION.
- (11). Secondhand stores and junk shops.
17. — Special privileges.
18. — Corporate franchises and privileges.
19. Exemptions.
 - (.5). In general.
 - (1). Constitutional provisions.
 - (2). Exemptions in corporate charters.
 - (3). Occupations and privileges in general.
 - (4). Manufacturers.
20. Eligibility for license.
21. Licensing officers.
22. Proceedings to procure license or certificate.
23. Form and requisites of license or certificate.
24. Registration.
25. Conditions imposed; regulations.
Excludes farm labor contractors, see LABOR AND EMPLOYMENT XVI.
- 25.5. Recovery funds.
26. Bonds or other security.
27. License fees and taxes.
28. — In general.
29. — Amount.
30. — Levy and assessment.
31. — Lien on property.
32. — Payment.
- 32.1. — Collection.
33. — Disposition of moneys collected.
34. — Refunding or recovering.
35. — Remedies for wrongful assessment or collection.
36. Construction and effect of licenses.
37. Transfer of rights.
38. Revocation, suspension, or forfeiture; discipline in general.
- 38.5. Rights and remedies of unlicensed or unauthorized persons and of persons dealing with them in general.
- 38.7. — In general.
- 39.1. — Validity of contracts in general.

238. LICENSES

I. FOR OCCUPATIONS AND PRIVILEGES.(Cont'd)

- 39.2. — Compensation for services in general.
- 39.3. — Actions in general.
- 39.39. — Miscellaneous occupations and activities in general.
- 39.40. — Architects and engineers.
 - (1). In general.
 - (2). Actions.
- 39.42. — Buying or discounting notes or securities.
- 39.43. — Contractors.
 - (1). In general.
 - (2). Actions.
- 39.45. — Dealers.
- 39.46. — Plumbers.
- 39.48. — Theatrical and athletic managers.
- 40. Violations of license or registration laws.
- 41. Penalties and forfeitures and actions therefor.
- 42. Criminal prosecutions.
 - (5). In general.
 - (1). Jurisdiction.
 - (2). Defenses.
 - (3). Indictment, information, or complaint.
 - (4). Evidence.
 - (5). Trial.
 - (6). Review.
 - (7). Sentence and punishment.

II. IN RESPECT OF REAL PROPERTY.

- 43. Nature of license in general.
- 44. Licenses distinguished from other rights in land.
 - (1). In general.
 - (2). Lease.
 - (3). Easement.
- 45. Mode of creation.
- 46. — In general.
- 47. — Parol licenses.
- 48. Requisites and validity.
- 49. Evidence as to existence.
- 50. Construction and operation in general.
- 51. Nature and extent of rights.
- 52. Alteration or modification.
- 53. Transfer of rights.
- 54. Abandonment.

II. IN RESPECT OF REAL PROPERTY.(Cont'd)

- 55. Obstruction by licensor.
- 56. Termination or extinguishment.
- 57. Revocation.
 - 57.1. — In general.
- 58. — Licenses revocable.
 - (1). In general.
 - (2). Licenses coupled with an interest.
 - (3). Licenses upon consideration.
 - (4). Executed licenses in general.
 - (5). Evidence of revocation.
- 59. — Right to revoke.
- 60. — Notice before revocation.
- 61. — Express revocation.
- 62. — Implied revocation.
- 63. — Operation and effect.
- 64. Pleading and evidence of license as defense.

239. LIENS

SUBJECTS INCLUDED

Charges on specific property or its proceeds by way of security for payment of debts or performance of other acts, whether arising from contract or equity between the parties, or imposed by rule of law or statute, and whether dependent on or independent of possession

Nature and grounds of such charges in general

Creation and waiver, discharge, or extinguishment thereof

Priorities of liens

Enforcement of liens in general

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Mortgage or pledge, liens created by, see MORTGAGES AND DEEDS OF TRUST, CHATTEL MORTGAGES, PLEDGES, SECURED TRANSACTIONS

Particular classes of personal relations, occupations, or transactions, liens peculiar to, see ATTORNEY AND CLIENT, FACTORS, SALES, VENDOR AND PURCHASER, and other specific topics

240. LIFE ESTATES

Particular property, liens peculiar to, see RAILROADS, LOGS AND LOGGING, MECHANICS' LIENS, MARITIME LIENS and other specific topics

Particular remedies, liens acquired by enforcement of, see CREDITORS' REMEDIES, LIS PENDENS, JUDGMENT, and other specific topics

Taxes, liens of, see TAXATION, INTERNAL REVENUE

1. Nature and incidents in general.
2. Creation by contract.
 - 2.1. — In general.
3. — Express.
4. — Implied.
5. Creation by operation of law in general.
6. Effect of usages.
7. Equitable liens.
8. Statutory liens.
9. Proceedings to perfect.
10. Debts or liabilities secured.
11. Subject-matter to which lien attaches.
12. Priorities.
13. Assignment.
14. Removal or transfer of property in general.
15. Rights and liabilities of purchasers of property.
16. Waiver, loss, or discharge.
17. Enforcement.
18. — In general.
- 18.5. — Retention of possession of property.
19. — Foreclosure and sale without action.
20. — Attachment.
21. — Execution or order for sale.
- 21.5. — Executory process.
22. — Actions.
23. Redemption.

240. LIFE ESTATES

SUBJECTS INCLUDED

Nature and incidents of estates not of inheritance, which are limited to or may possibly

last during the life of the tenant or the life or lives of another or others, and are created by act of the parties

Rights, powers, and liabilities of life tenants, as to the remaindermen and others

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Construction of grants, devises, and bequests for life, see DEEDS, WILLS

Merger of life estate and remainder, see REMAINDERS

Operation of law, life estates by, see DESCENT AND DISTRIBUTION IV

Rights and liabilities of—

Remaindermen, see REMAINDERS

Reversioners, see REVERSIONS

Waste, remedies for, see WASTE

1. Nature and incidents in general.
2. Constitutional and statutory provisions.
3. Creation and existence in general.
4. Termination.
5. Relation of life tenant to remainderman in general.
6. Requirement of security from life tenant.
7. Possession of real property.
8. Adverse possession by or under life tenant.
9. Assertion of lien or charge by life tenant.
10. Acquisition of outstanding title or claim by life tenant.
11. Enjoyment and use of real property in general.
12. Working or leasing mines or oil or gas wells.
13. Timber.
14. Crops.
15. Income and accretions.
 - (1). In general.
 - (2). Interests in corporate stock.
16. Incumbrances.
17. Repairs and improvements.
18. Taxes and assessments.
19. Insurance.
20. Expenses and losses.
21. Life estates in personal property.
22. Rights and liabilities of life tenants as to third persons.
23. Sales and conveyances by life tenants.
24. Mortgages by life tenants.

240. LIFE ESTATES

- 25. Leases by life tenants.
- 26. Contracts by life tenants.
- 27. Sale of property under order of court.
 - (1). In general.
 - (2). For reinvestment.
 - (3). Title acquired by purchaser.
- 28. Actions by or against life tenants.

241. LIMITATION OF ACTIONS

SUBJECTS INCLUDED

Statutory restrictions of the time within which actions may be brought

Application and general operation of such statutory provisions

Times of limitation prescribed for actions in general, when such times begin to run, and postponement and interruption thereof

Exceptions from and suspension of the operation of the statutes

Removal of statutory bar by new promise, acknowledgment, part payment, etc.

Pleading such limitations by way of defense and matters in avoidance of the bar thereof

Evidence relating thereto

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Administrative agencies and proceedings, timeliness of judicial review or intervention, see ADMINISTRATIVE LAW AND PROCEDURE and other specific topics

Adverse possession of property as an element or evidence of title, see ADVERSE POSSESSION

Agreement, limitations by, see CONTRACTS, INSURANCE, CARRIERS, and topics relating to other classes of contracts

Criminal prosecutions, see CRIMINAL LAW and topics relating to particular crimes

Limitations, lapse of time, laches, etc., in—
Admiralty, see ADMIRALTY
Equity, see EQUITY

Limitations on actions by or against particular classes of persons, or for particular forms or kinds of actions or other remedies, see

EXECUTORS AND ADMINISTRATORS, MECHANICS' LIENS, BANKRUPTCY, MUNICIPAL CORPORATIONS, TAXATION, and other specific topics

Presumption of payment from lapse of time, see PAYMENT

Statutory rights or remedies, limitations restricting, see DEATH and topics relating to other particular statutory rights and remedies

I. STATUTES OF LIMITATION, ¶1-42.

(A) NATURE, VALIDITY, AND CONSTRUCTION IN GENERAL, ¶1-15.

(B) LIMITATIONS APPLICABLE TO PARTICULAR ACTIONS, ¶16-42.

II. COMPUTATION OF PERIOD OF LIMITATION, ¶43-138.

(A) ACCRUAL OF RIGHT OF ACTION OR DEFENSE, ¶43-64.

(B) PERFORMANCE OF CONDITION, DEMAND, AND NOTICE, ¶65-69.

(C) PERSONAL DISABILITIES AND PRIVILEGES, ¶70-78.

(D) DEATH AND ADMINISTRATION, ¶80-83.

(E) ABSENCE, NONRESIDENCE, AND CONCEALMENT OF PERSON OR PROPERTY, ¶84-94.

(F) IGNORANCE, MISTAKE, TRUST, FRAUD, AND CONCEALMENT OR DISCOVERY OF CAUSE OF ACTION, ¶95-104.

(G) PENDENCY OF LEGAL PROCEEDINGS, INJUNCTION, STAY, OR WAR, ¶104.5-114.

(H) COMMENCEMENT OF PROCEEDING; RELATION BACK, ¶115-138.

III. ACKNOWLEDGMENT, NEW PROMISE, AND PART PAYMENT, ¶139-164.

IV. OPERATION AND EFFECT OF BAR BY LIMITATION, ¶165-175.

V. PLEADING, EVIDENCE, TRIAL, AND REVIEW, ¶176-202.

I. STATUTES OF LIMITATION.

(A) NATURE, VALIDITY, AND CONSTRUCTION IN GENERAL.

1. Nature of statutory limitation.

241. LIMITATION OF ACTIONS

I. STATUTES OF LIMITATION.(Cont'd)

2. What law governs.
 - (1). In general.
 - (2). Effect of residence of parties.
 - (3). In actions for tort.
 - (4). Effect of federal statute in state courts.
3. Constitutional and statutory provisions.
 - (1). In general.
 - (2). Amendment or repeal of statutes.
4. Validity of statutes.
 - (1). In general.
 - (2). Constitutionality of statute.
5. Construction of limitation laws in general.
 - (1). In general.
 - (2). Reference or application to other statutes.
 - (3). Actions to which statute applies.
6. Retroactive operation.
 - (1). In general.
 - (2). Equitable actions.
 - (3). Mortgage foreclosure.
 - (4). Actions by state or municipality.
 - (5). Actions relating to real property.
 - (6). Actions on judgments.
 - (7). Disability, absence, or nonresidence of person.
 - (8). Acknowledgment, new promise, or part payment.
 - (9). Revival of causes of action by amendment or repeal of statute.
 - (10). Provisions for existing causes of action.
 - (11). Computation of time.
10. Persons as against whom limitation is available.
11. Limitation as against state, municipality, or public officers.
 - (5). In general.
 - (1). Government, state or officer thereof.
 - (2). County or officers thereof.
 - (3). Municipality or officers thereof.
 - (4). Public corporations or officers thereof.
12. Persons who may rely on limitation.
 - (1). In general.
 - (2). Government, municipality, or officers thereof.

I. STATUTES OF LIMITATION.(Cont'd)

13. Estoppel to rely on limitation.
 14. Agreements as to period of limitation.
 15. Agreements waiving limitation.
- (B) LIMITATIONS APPLICABLE TO PARTICULAR ACTIONS.**
- See also particular topics.*
16. Limitation as affected by nature or form of remedy in general.
 17. Effect, on limitation, of election between remedies.
 18. Particular forms of action.
 19. Recovery of real property.
 - (1). In general.
 - (2). Actions at law in general.
 - (3). Equitable actions.
 - (4). Partition.
 - (5). Foreclosure of mortgage or deed for security.
 - (6). Redemption from mortgage or deed for security.
 - (7). Title under forced sale.
 - (8). Establishment of lost deed.
 - (9). Enforcement of vendor's lien.
 - (10). Proceedings for assignment or recovery of dower.
 20. Recovery of personal property.
 21. Contracts in general.
 - (1). In general.
 - (2). Construction of contract.
 - (3). Employment.
 - (4). Carriage.
 - (5). Liability of corporate stockholders and officers.
 - (6). Contract for reimbursement.
 22. Sealed instruments.
 - (1). In general.
 - (2). What constitutes instrument under seal in general.
 - (3). Mortgage.
 - (4). Sealed note or indorsement thereon.
 - (5). Coupons.
 - (6). Covenants in conveyance.
 - (7). Bonds in general.
 - (8). Official and fiduciary bonds.
 23. Written contracts.
 24. — In general.
 - (1). In general.

241. LIMITATION OF ACTIONS

I. STATUTES OF LIMITATION.(Cont'd)

- (2). What constitutes written contract in general.
- (3). Subscription.
- (4). Contract of sale.
- (5). Corporate charter.
- (6). Covenants of warranty.
- 25. — Instruments for payment of money.
 - (1). In general.
 - (2). What constitutes instrument for payment of money.
 - (3). Bill or note in general.
 - (4). Purchase-money notes.
 - (5). Indorsement of bill or note.
 - (6). Receipt for money with promise to repay.
 - (7). Attested writings.
 - (8). Municipal or county warrants.
 - (9). Bank book.
 - (10). Mortgage or security.
 - (11). Judgment.
 - (12). Agreement of attorney to collect claim and account for proceeds.
 - (13). Offer of reward.
- 26. Oral contracts.
- 26.1. — In general.
- 27. — Express.
- 28. Implied contracts and debts and obligations not evidenced by writing.
 - (1). In general.
 - (2). Implied contract growing out of breach of written contract.
- 29. Accounts.
 - Partnership accounts, see PARTNERSHIP §1014.*
 - (1). In general.
 - (2). What constitutes accounts.
 - (3). Account stated.
- 30. Torts in general.
- 31. Injuries to the person.
- 32. Injuries to property.
 - (1). In general.
 - (2). Taking or injuring property without compensation.
 - (3). Overflowing land.
- 33. Liabilities for acts or omissions in official capacity.
- 34. Liabilities created by statute.
 - (1). In general.
 - (2). Liability of state or municipality.

I. STATUTES OF LIMITATION.(Cont'd)

- (3). Liability of public officer.
- (4). Official or statutory fees.
- (5). Liabilities of corporate stockholders or officers.
- (6). Injuries to property.
- (7). Taxes and assessments.
- 35. Penalties and forfeitures.
 - (1). In general.
 - (2). Injuries to property.
 - (3). Liability of corporate officers or stockholders.
 - (4). Recovery of taxes.
 - (5). Recovery of wager.
 - (6). Discrimination or overcharges.
 - (7). Effect of interest of prosecutor.
- 36. Equitable actions and remedies in general.
 - (1). In general.
 - (2). Trusts.
 - (3). Rescission or cancellation.
 - (4). Specific performance.
 - (5). Reformation of instruments.
 - (6). Enforcement of vendor's lien.
- 37. Relief on ground of fraud or mistake.
 - (1). In general.
 - (2). Actions to which statute applies.
 - (3). Relief against judgment or award.
 - (4). Rescission or cancellation.
- 38. Civil proceedings other than actions.
- 39. Actions or proceedings not specially provided for.
 - (1). In general.
 - (2). Contracts in general.
 - (3). Redemption from mortgage.
 - (4). Breach of warranty.
 - (5). Reformation of instruments.
 - (6). Enforcement of judgment.
 - (7). Rescission or cancellation.
 - (8). Quieting title.
 - (9). Accounting.
 - (10). Mandamus.
 - (11). Establishment or enforcement of trust.
 - (12). Recovery of real property and dower.
 - (13). Injuries to property.
 - (14). Liability of corporate stockholders.

241. LIMITATION OF ACTIONS

I. STATUTES OF LIMITATION.(Cont'd)

- (15). Wills.
- 40. Defenses in general.
 - (1). In general.
 - (2). Fraud as defense.
- 41. Set-offs, counterclaims, and cross-actions.
- 42. Applicability of different limitations to same action or proceeding.

II. COMPUTATION OF PERIOD OF LIMITATION.

(A) ACCRUAL OF RIGHT OF ACTION OR DEFENSE.

- 43. Causes of action in general.
- 44. Title to or possession of real property.
 - (1). In general.
 - (2). Nature of entry or possession.
 - (3). Title to support action in general.
 - (4). Title under forced or judicial sale.
 - (5). Title or right of parties to mortgage or deed as security.
 - (6). Rights of heirs and devisees.
 - (7). Tacking successive possession or right.
 - (8). *Forcible entry and detainer.*
- 45. Title to or possession of personal property.
- 46. Contracts in general.
 - (1). In general.
 - (2). Conditional contract.
 - (3). Indefinite time for performance.
 - (4). Contract to pay on demand.
 - (5). Contract to pay after death.
 - (6). Breach of contract in general.
 - (7). Contract of employment.
 - (8). Contract with agent.
 - (9). Contract of sale.
 - (10). Guaranty.
 - (11). Contract of carriage.
 - (12). Assumption of debt or mortgage.
- 47. Covenants and conditions.
 - (1). In general.
 - (2). Covenants in sale or conveyance.
 - (3). Bond or contract of suretyship in general.
 - (4). Guardian's bond.
- 48. Instruments for payment of money.
 - (5). In general.
 - (1). Bills and notes.
 - (2). Indefinite time for payment.

II. COMPUTATION OF PERIOD OF LIMITATION.(Cont'd)

- (3). Conditional obligation.
- (4). Bonds.
- (5). Effect of indorsement of note.
- (6). Municipal obligations.
- (7). Effect of security.
- 49. Implied contracts.
 - (1). In general.
 - (2). Liability for services rendered.
 - (3). Liability of agent or attorney for funds collected.
 - (4). Funds received on invalid obligation or without authority.
 - (5). Liability to refund overpayment by mistake.
 - (6). Liability to contribution.
 - (7). Implied warranty.
 - (8). Usury.
- 50. Continuing contracts.
 - (1). In general.
 - (2). Contract of employment or agency in general.
 - (3). Professional services by attorney.
 - (4). Contract for maintenance.
- 51. Severable contracts and installments.
 - (1). In general.
 - (2). Installments in general.
 - (3). Interest.
- 52. Accounts.
- 53. — In general.
 - (1). In general.
 - (2). Nature of account in general.
 - (3). Services rendered.
 - (4). Partnership.
 - (5). Principal and agent.
 - (6). Tacking transactions or accounts after cessation.
- 54. — Mutual accounts.
 - (5). In general.
 - (1). Necessity for mutuality of accounts.
 - (2). What constitutes mutual accounts.
 - (3). Effect of mutuality of accounts.
 - (4). Closing accounts.
- 55. Torts.
 - (1). In general.
 - (2). Negligence.

241. LIMITATION OF ACTIONS

II. COMPUTATION OF PERIOD
OF LIMITATION.(Cont'd)

- (3). Negligence in performance of professional services.
- (4). Injuries to person.
- (5). Injuries to property in general.
- (6). Continuing injury in general.
- (7). Injuries to property by flowage, diversion or obstruction of waters.
- (8). Wrongful seizure of property.
- 56. Reimbursement or indemnity from person ultimately liable.
 - (1). In general.
 - (2). Indemnity.
 - (3). Action by surety or indorser against principal.
 - (4). Action by agent against principal.
- 57. Liabilities for acts or omissions in official capacity.
 - (1). In general.
 - (2). Failure to require sufficient bond or security.
 - (4). Misappropriation of public funds.
 - (5). Failure to pay over money due in official capacity.
- 58. Liabilities created by statute.
 - (1). In general.
 - (2). Liability of municipality or public officers.
 - (3). Damages resulting from public improvement.
 - (4). Liability of corporate officers or stockholders.
 - (5). Officers and stockholders of bank.
 - (6). Recovery of taxes or assessments.
- 59. Penalties and forfeitures.
 - (1). In general.
 - (2). Taking usury.
- 60. Equitable actions and remedies.
 - (1). In general.
 - (2). Accounting.
 - (3). Accounting between partners.
 - (4). Accounting by trustee.
 - (5). Rescission or cancellation.
 - (6). Reformation of instrument.
 - (7). Enforcement of contract.
 - (8). Recovery of purchase money on failure of title.
 - (9). Enforcement of vendor's lien.

II. COMPUTATION OF PERIOD
OF LIMITATION.(Cont'd)

- (10). Quieting title.
- (11). Subrogation.
- 61. Civil proceedings other than actions.
- 62. Defenses in general.
- 63. Set-offs, counterclaims, and cross-actions.
- 64. Effect of subsequent accrual of new cause of action.
- (B) PERFORMANCE OF CONDITION, DEMAND, AND NOTICE.
- 65. Conditions precedent in general.
 - (1). In general.
 - (2). Preliminary action, judgment, or execution.
 - (3). Proceeding to fix liability.
 - (4). Conditional subscription.
 - (5). Obligations to insurance company.
- 66. Demand.
 - (1). In general.
 - (2). Necessity for demand in general.
 - (3). Obligations of state or municipality.
 - (4). Subscription for corporate stock.
 - (5). Claim of wife against husband.
 - (6). Demand for performance of contract.
 - (7). Funds or property held in trust or in fiduciary capacity.
 - (8). Funds or property held by bailee.
 - (9). Deposits.
 - (10). Claim by principal against agent or attorney.
 - (11). Action for breach of official duty.
 - (12). Liability payable on demand.
 - (13). Liability payable at specified time after demand.
 - (14). Property wrongfully received or held.
 - (15). Time for making demand.
 - (16). Sufficiency of demand.
- 67. Notice.
- 68. Tender.
- 69. Leave to sue.
- (C) PERSONAL DISABILITIES AND PRIVILEGES.
- 70. Disabilities in general.
 - (1). In general.

241. LIMITATION OF ACTIONS

II. COMPUTATION OF PERIOD OF LIMITATION.(Cont'd)

- (2). Disability of part of several jointly interested.
71. Alienage.
72. Infancy.
- (1). In general.
 - (2). Personal actions.
 - (3). Actions for recovery of real property.
 - (4). Action against former guardian or trustee.
 - (5). Effect of marriage.
 - (6). Effect of nonresidence.
 - (7). Effect of action during disability.
73. Coverture.
- (1). In general.
 - (2). Effect of separate property acts.
 - (3). Nature of property or cause of action involved.
 - (4). Claim between spouses.
 - (5). Claim to real property in general.
 - (6). Recovery of property disposed of by husband.
 - (7). Recovery of property purporting to have been conveyed by wife.
 - (8). Effect of separation from husband.
 - (9). Effect of disability on joint action by husband and wife.
 - (9.5). Effect on husband's right to wife's property.
 - (10). Effect on wife's heirs of surviving husband's interest.
74. Insanity or other incompetency.
- (1). In general.
 - (2). Removal of disability.
75. Conviction or imprisonment for crime.
76. Disability intervening after accrual of cause of action.
- (1). In general.
 - (2). Infancy.
 - (3). Coverture.
 - (4). Insanity.
77. Coexisting disabilities.
78. Tacking successive disabilities.
- (D) DEATH AND ADMINISTRATION.
80. Death of person entitled to sue.

II. COMPUTATION OF PERIOD OF LIMITATION.(Cont'd)

82. Accrual of cause of action before issuance of letters testamentary or of administration.
83. Death of person liable.
- (1). In general.
 - (2). Effect of administration of estate of decedent or want thereof.
 - (3). Death of person jointly liable.
 - (4). Death after commencement of action.
- (E) ABSENCE, NONRESIDENCE, AND CONCEALMENT OF PERSON OR PROPERTY.
84. Absence at time of accrual of cause of action.
- (.5). In general.
 - (1). Person entitled to sue.
 - (2). Person liable in general.
 - (3). Nature of absence.
 - (4). Action relating to specific property or interests therein.
 - (5). Effect of property subject to levy within jurisdiction.
85. Departure after accrual of cause of action.
- (.5). In general.
 - (1). Person entitled to sue.
 - (2). Person liable in general.
 - (3). Nature of absence or removal.
 - (4). Liability created out of state.
 - (5). Actions relating to specific property or interests therein.
 - (6). Effect of property subject to levy within jurisdiction.
86. Nonresidence.
87. — In general.
- (1). In general.
 - (2). Person entitled to sue.
 - (3). Person liable.
 - (4). Nature of residence.
 - (5). Actions relating to specific property or interests therein.
 - (6). Effect of agency within jurisdiction.
88. — Corporations.
89. Return and residence after absence.
90. Concealment of person or residence.
91. — In general.

241. LIMITATION OF ACTIONS

II. COMPUTATION OF PERIOD OF LIMITATION.(Cont'd)

- 92. — Ignorance of person entitled to sue.
- 93. Concealment of property involved or liable.
- 94. Effect as to parties jointly or severally liable, guarantors, and sureties.

(F) IGNORANCE, MISTAKE, TRUST, FRAUD, AND CONCEALMENT OR DISCOVERY OF CAUSE OF ACTION.

- 95. Ignorance of cause of action.
 - (1). In general; what constitutes discovery.
 - (1.5). Knowledge as to extent of harm or damage.
 - (2). Want of diligence by one entitled to sue.
 - (3). Nature of harm or damage, in general.
 - (4). Injuries to the person.
 - (4.1). — In general.
 - (5). — Diseases; drugs.
 - (6). — Libel and slander.
 - (7). Injuries to property.
 - (8). Title to or interest in property.
 - (9). Contracts; warranties.
 - (10). Professional negligence or malpractice.
 - (10.1). — In general.
 - (11). — Attorneys.
 - (12). — Health care professionals in general.
 - (13). — “Foreign object” or “foreign substance” claims.
 - (14). Labor and employment.
 - (15). Civil rights.
 - (16). Consumers’ remedies.
 - (17). Antitrust claims.
 - (18). Securities; corporations.
- 96. Mistake as ground for relief.
 - (1). In general.
 - (2). Discovery of mistake.
- 97. Duress as ground for relief.
- 98. Fraud as ground for relief.
- 99. — In general.
 - (1). In general.
 - (2). Fraud in the purchase, sale, or acquisition of property.
 - (3). Cancellation of instrument.

II. COMPUTATION OF PERIOD OF LIMITATION.(Cont'd)

- 100. — Discovery of fraud.
 - (1). In general.
 - (2). What constitutes cause for relief on ground of fraud within exception.
 - (3). Fraud in obtaining possession of or title to property.
 - (4). Fraud in obtaining judgment.
 - (5). Action for deceit.
 - (6). Fraud in sale of property.
 - (7). Fraud of person acting in official or fiduciary capacity.
 - (8). Fraud of agent or attorney.
 - (9). Action to open account or settlement.
 - (10). Cancellation of instruments.
 - (11). Diligence in discovering fraud.
 - (12). What constitutes discovery of fraud.
 - (13). Constructive notice of fraud.
- 101. Existence of trust.
- 102. — In general.
 - (1). In general.
 - (2). When relation exists in general.
 - (3). Possession of property.
 - (4). Express or continuing trust.
 - (5). What constitutes express or continuing trust.
 - (6). Resulting or implied trust.
 - (7). What constitutes resulting or implied trust.
 - (8). Constructive trust.
 - (9). What constitutes constructive trust.
 - (10). Rights of parties claiming under trustee.
 - (11). Termination of trust.
- 103. — Repudiation or violation of trust.
 - (1). In general.
 - (2). Necessity for disclaimer or repudiation.
 - (3). What constitutes repudiation or violation of trust.
 - (4). Notice of repudiation.
- 104. Concealment of cause of action.
 - (1). In general.
 - (2). What constitutes concealment.

241. LIMITATION OF ACTIONS

II. COMPUTATION OF PERIOD OF LIMITATION.(Cont'd)

- (3). Concealment by agent or third person.

(G) PENDENCY OF LEGAL PROCEEDINGS, INJUNCTION, STAY, OR WAR.

- 104.5. Suspension or stay in general; equitable tolling.
105. Pendency of action or other proceeding.
 (1). In general.
 (2). Pendency of action on different cause or in different forum.
106. Pendency of appeal.
107. Supersedeas or stay of proceedings.
108. Pendency of arbitration.
109. Property in custody of the law.
110. Pendency of proceedings under assignment for creditors or in insolvency or bankruptcy.
111. Injunction.
112. Stay laws.
113. War.
114. Suspension of statute of limitations.

(H) COMMENCEMENT OF PROCEEDING; RELATION BACK.

115. Mode of computation of time limited.
117. Proceedings constituting commencement of action.
118. — In general.
 (1). In general.
 (2). Filing pleadings.
119. — Issuance and service of process.
 (5). In general.
 (1). Issuance of process.
 (2). Delivery of process to officer.
 (3). Service of process.
 (4). Service on part of defendants.
 (5). Substituted service.
 (6). Subsequent, alias, or pluries process.
120. Want of jurisdiction.
121. Defects as to parties.
 (1). In general.
 (2). Amendment of defects.
122. Defects or irregularities in process or service.
123. Defects or irregularities in pleadings or other proceedings.

II. COMPUTATION OF PERIOD OF LIMITATION.(Cont'd)

124. Intervention or bringing in new parties.
125. Substitution of parties.
126. Effect as to persons not parties.
126.5. Class actions, matters peculiar to.
127. Amendment of pleadings.
 (1). In general.
 (2). Amendment restating original cause of action.
 (2.1). — In general.
 (3). — Nature of action in general.
 (4). — Actions on contract.
 (5). — Actions for injuries to the person.
 (6). — Actions for causing death.
 (7). — Actions for libel and slander.
 (8). — Actions for injuries to or wrongful dealings with property.
 (9). — Actions to enforce liens.
 (10). — Will contest.
 (11). Amendment introducing new cause of action.
 (11.1). — In general.
 (12). — Nature of action in general.
 (13). — Actions on contract.
 (14). — Actions for injuries to the person.
 (15). — Actions for causing death.
 (16). — Actions for malicious prosecution or slander.
 (17). — Actions for injuries to or wrongful dealings with property.
 (18). Amendment affecting form of action or relief.
128. Defenses in general.
129. Set-offs, counterclaims, and cross-actions.
130. New action after dismissal or nonsuit or failure of former action.
 (1). In general.
 (2). Actions within exception of statute.
 (3). Nature or form or identity of actions or proceedings.
 (4). Abatement or abandonment of former action.
 (5). Dismissal or nonsuit in general.

241. LIMITATION OF ACTIONS

II. COMPUTATION OF PERIOD OF LIMITATION.(Cont'd)

- (6). New action in different forum.
- (7). Failure of action for want of jurisdiction.
- (8). Failure for defects as to parties.
- (9). Failure of action for want of or defects in process or service thereof.
- (10). Failure of action for defects in pleading.
- (11). Identity of or change in parties.
- (12). Decisions on review.
- (13). Action on set-off, counterclaim, or cause of action alleged as defense.
- (14). Severance of action.
- 131. Civil proceedings other than actions in general.
- 132. Presentation of claim against estate of decedent.
- 133. Presentation of claim against estate of insolvent or bankrupt.
- 134. Proceedings in other court or tribunal.
- 135. Proceedings in other state.
- 136. Failure to commence action or proceeding in time.
- 137. — In general.
- 138. — Excuses for delay.

III. ACKNOWLEDGMENT, NEW PROMISE, AND PART PAYMENT.

- 139. Causes of action which may be renewed or revived.
- 140. Acknowledgment or new promise.
- 140.1. — In general.
- 141. — Nature in general.
- 142. — Persons to whom made.
- 143. — Persons by whom made.
- (1). In general.
- (2). Joint and several obligations.
- (3). Partners.
- (4). Husband and wife.
- (5). Executor or administrator.
- (6). Parties to incumbrance or their successors in interest.
- 145. — Form and requisites in general.
- (1). In general.
- (2). Provisions in will.

III. ACKNOWLEDGMENT, NEW PROMISE, AND PART PAYMENT.(Cont'd)

- (3). Proceedings by municipal corporation or officers.
- (4). Judicial admissions.
- (5). Consideration.
- 146. — Requirement of writing.
- (1). In general.
- (2). Effect of verbal acknowledgment or promise.
- (3). Sufficiency of writing or signature.
- 147. — Including debt in schedule on assignment for creditors.
- 148. — Sufficiency of acknowledgment or promise in general.
- (.5). In general.
- (1). Essential elements in general.
- (2). Implied promise.
- (3). Sufficiency of compliance with requirements as to essential elements in general.
- (4). Admission of existing liability and renewal of obligation.
- (5). Assertion of payment.
- (6). Accounts.
- 149. — Qualifications and conditions.
- (1). In general.
- (2). Provisions for payment.
- (3). Refusal or inability to pay and claim of set-off.
- (4). Compromise or settlement.
- (5). Acceptance of offer.
- (6). Fulfillment or compliance with condition.
- 150. — Certainty and definiteness.
- (1). In general.
- (2). Provisions for payment.
- (3). Identity of debt.
- (4). Amount of debt.
- 151. — Construction and operation.
- (1). In general.
- (2). Renewal or revival of cause of action.
- (3). Time of making.
- (4). Accrual of right of action and limitations.
- (5). Effect of condition or contingency.
- 152. Part payment.
- 152.1. — In general.

241. LIMITATION OF ACTIONS

III. ACKNOWLEDGMENT, NEW PROMISE, AND PART PAYMENT.(Cont'd)

- 153. — Nature in general.
- 154. — Persons to whom made.
- 155. — Persons by whom made.
 - (1). In general.
 - (2). Joint and several obligations.
 - (3). Principals, sureties, indorsers, and guarantors.
 - (4). Partners.
 - (5). Husband and wife.
 - (6). Executor or administrator, and heirs, devisees, or life tenants.
 - (7). Assignee, receiver, or trustee.
 - (8). Parties to incumbrance and their successors in interest.
- 157. — Sufficiency in general.
 - (1). In general.
 - (2). Admission or denial of liability and payment by way of compromise or settlement.
 - (3). Payment of interest.
 - (4). Application of payments.
 - (5). Payments from proceeds of security.
- 158. — Medium of payment.
- 159. — Entry of credit in account.
- 160. — Indorsement on note or other instrument.
- 162. — Ratification of unauthorized payment.
- 163. — Operation and effect.
 - (1). In general.
 - (2). Payment on account.
 - (3). Renewal or revival of cause of action.
 - (4). Effect of statute requiring written acknowledgment or promise.
 - (5). Time of making.
 - (6). Accrual of right of action and limitations.
- 164. Revival of debt as revival of lien or other security.

IV. OPERATION AND EFFECT OF BAR BY LIMITATION.

- 165. Operation as to rights or remedies in general.
- 166. Nature and extent of bar.
- 167. Bar of debt as affecting security.

IV. OPERATION AND EFFECT OF BAR BY LIMITATION.(Cont'd)

- (1). In general.
 - (2). Mortgage or deed as security.
 - (3). Vendor's lien.
- 168. Bar of security as affecting debt.
- 169. Effect as to remedies in other states.
- 170. Actions and other remedies barred.
- 171. Persons to whom bar is available.
- 172. — In general.
- 173. — Personal nature of defense.
- 174. Persons barred.
 - (1). In general.
 - (2). Effect on beneficiary of limitations against trustee or person acting in representative capacity.
- 175. Waiver of bar.

V. PLEADING, EVIDENCE, TRIAL, AND REVIEW.

- 176. Pleading in anticipation of defense.
- 176.1. — In general.
- 177. — Necessity.
 - (1). In general.
 - (2). Necessity of pleading matters avoiding bar of statute.
 - (3). Fraud or mistake.
 - (4). Acknowledgment, new promise, and part payment.
- 178. — Sufficiency of allegations in general.
- 179. — Matters avoiding bar of statute.
 - (1). In general.
 - (2). Ignorance, trust, fraud, and concealment of cause of action.
 - (3). Acknowledgment, new promise, and part payment.
- 180. Demurrer, exception, or motion raising defense.
 - (1). In general.
 - (2). Matters appearing on face of pleadings.
 - (3). Nature of action or proceeding.
 - (4). Matters avoiding bar of statute.
 - (5). Form, requisites, sufficiency, and time for filing.
 - (6). Waiver.
 - (7). Motion.
- 181. Pleading statute as defense.

241. LIMITATION OF ACTIONS

V. PLEADING, EVIDENCE, TRIAL, AND REVIEW.(Cont'd)

- 181.1. — In general.
- 182. — Necessity.
 - (5). In general.
 - (1). Time to plead.
 - (2). Necessity in general.
 - (3). Necessity of special plea of statute.
 - (4). Matters appearing on face of pleadings.
 - (5). Waiver or estoppel by failure to plead.
 - (6). Proceedings by referee or commissioner.
 - (7). Pleading statute in avoidance of defense.
- 183. — Sufficiency of denials and allegations.
 - (1). In general.
 - (2). Reference to statute and setting out facts.
 - (3). Lapse of time and accrual of right of action.
 - (4). Nature of action.
 - (5). Matters avoiding bar.
 - (6). Different causes of action.
- 184. — Amendment to plead statute.
- 185. — Demurrer or reply to plea or answer.
- 185.5. — Construction and operation of pleadings.
- 186. Pleading in avoidance of defense.
- 186.1. — In general.
- 187. — Necessity.
- 188. — Notice of matter in avoidance.
- 189. — Amendment of original pleading.
- 190. — Replication or reply and subsequent pleadings.
- 191. — Sufficiency of allegations in general.
- 192. — Matters avoiding bar of statute.
 - (5). In general.
 - (1). Acknowledgment, new promise, and part payment.
 - (2). Personal disabilities.
 - (3). Trust, fraud, and concealment of cause of action.
 - (4). Commencement of action.
- 193. Issues, proof, and variance.

V. PLEADING, EVIDENCE, TRIAL, AND REVIEW.(Cont'd)

- 194. Evidence.
- 194.1. — In general.
- 195. — Presumptions and burden of proof.
 - (5). In general.
 - (1). Presumptions in general.
 - (3). Burden of proof in general.
 - (4). Personal disabilities and absence or nonresidence.
 - (5). Fraud or concealment of cause of action.
 - (6). Acknowledgment, new promise, and part payment.
- 196. — Admissibility.
 - (1). In general.
 - (2). Acknowledgment or new promise.
 - (3). Part payment.
 - (4). Parol evidence.
- 197. — Weight and sufficiency.
 - (1). In general.
 - (2). Ignorance, trust, fraud, and concealment of cause of action.
 - (3). Acknowledgment or new promise.
 - (4). Part payment.
- 199. Questions for jury.
 - (1). In general.
 - (2). Fraud and concealment of cause of action.
 - (3). Acknowledgment or new promise.
 - (4). Part payment.
- 200. Instructions.
 - (1). In general.
 - (2). Acknowledgment, new promise, and part payment.
- 201. Verdict, findings and judgment.
- 202. Review.
 - (1). In general.
 - (2). Presumptions.

242. LIS PENDENS

SUBJECTS INCLUDED

Effect of pendency of actions to subject property involved therein to the power of the

242. LIS PENDENS

court during the continuance of the litigation, so that it shall abide the result

What property may be so subject

What constitutes pendency of suit for such purpose

Necessity of notice, and requisites and sufficiency of notices of pendency of action, and filing and service thereof

Operation and effect of pending actions and of notice thereof on rights of purchasers and others as to property constituting the subject of such actions

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Defense of pendency of other action, see ABATEMENT AND REVIVAL, PLEADING

Mechanics' liens, notices of pendency of actions to enforce, see MECHANICS' LIENS

1. Nature and grounds in general.
2. Statutory provisions.
3. Actions affecting rights to property involved therein.
 - (1). In general.
 - (2). Actions for divorce and alimony.
 - (3). Actions to set aside conveyances, and creditors' suits.
 - (4). Actions to establish or enforce liens.
4. Property subject to lis pendens.
5. Jurisdiction of property and of owner or claimant thereof.
6. Commencement and pendency of action.
7. — In general.
 - 7.1. — Filing pleading.
 - 7.2. — Change of venue or removal and loss of papers from files.
8. — Time of commencement of lis pendens.
9. — Sufficiency of description of property in pleadings.
10. — Prosecution of action.
11. — Termination of action.
 - (1). In general.
 - (2). As affected by proceedings for review or vacation of judgment.
12. Notice of pendency of action.
 - 12.1. — In general.
13. — Necessity in general.

15. — Actions in which notice is authorized.
16. — Form and requisites in general.
17. — Sufficiency of description of property.
18. — Filing and recording.
20. — Cancellation, discharge, or modification.
21. Effect of amendment of pleadings.
22. Operation and effect in general.
 - (1). In general.
 - (2). Extent of notice.
 - (3). Action on unrecorded instrument as notice overcoming lack of record.
 - (4). Nature of judgment as affecting purchasers pendente lite.
 - (5). Effect on prior unrecorded conveyance.
23. Purchasers pending suit.
24. — In general.
 - (1). In general.
 - (2). Actions to enforce lien or charges.
 - (3). Actions to set aside conveyances, and creditors' suits.
 - (4). Actions for recovery of specific real or personal property.
 - (5). Partition suits.
 - (6). Actions for specific performance.
25. — Persons bound by judgment or decree.
 - (5). In general.
 - (1). Who will be deemed purchasers.
 - (1.1). — In general.
 - (2). — Acquisition of possession.
 - (3). — Incumbrancers.
 - (4). — Purchasers at judicial sales.
 - (5). — Purchase prior but conveyance subsequent to commencement of lis pendens.
 - (6). — Purchasers on foreclosure of mortgage senior to commencement of lis pendens.
 - (7). — Necessity that purchaser should claim under party to suit to be affected by lis pendens.
 - (8). — Purchasers from vendor in privity with party to suit.
 - (9). — Purchasers at tax sales.
26. — Rights and liabilities.

242. LIS PENDENS

- (1). In general.
- (2). Effect of pendency of action to suspend running of statute of limitations.
- (3). Right of purchaser to compensation for improvements.
- (4). Relief awarded against purchaser pendente lite.

244H. LOBBYING

SUBJECTS INCLUDED

Regulation, particularly by statute, of conduct directed at influencing legislative action

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Antitrust regulation, see ANTITRUST AND TRADE REGULATION

Attorneys, regulation of as attorneys, see ATTORNEY AND CLIENT

Billing of lobbying expenses—

Under public contracts, see PUBLIC CONTRACTS and other government topics

As attorney fees, see COSTS, FEDERAL CIVIL PROCEDURE

To utility customers, see PUBLIC UTILITIES and other specific topics

Bribery, see BRIBERY

Construction of statutes, opinions of lobbyists concerning, see STATUTES ¶1186

Contracts to influence legislation, validity of, see CONTRACTS ¶126

Ethics restrictions on public officials and employees, see PUBLIC EMPLOYMENT and other government topics

Extortion, see EXTORTION

Misconduct as affecting validity of statutes, see STATUTES VIII

Noerr-Pennington doctrine, see ANTITRUST AND TRADE REGULATION, CONSTITUTIONAL LAW

Public records, see RECORDS

Racketeering, see RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

Tax issues, see INTERNAL REVENUE, TAXATION

1. In general.
2. Licensing and registration.
3. Expenditures and gifts.
4. Campaign finance restrictions.
See also ELECTION LAW V.
5. Restrictions on employment; “revolving door”.
6. Reporting and disclosure.
7. Administrative agencies and proceedings.
8. Judicial review; actions.
9. Offenses and prosecutions.

245. LOGS AND LOGGING

SUBJECTS INCLUDED

Cut timber and nature and incidents of rights of property therein

Regulation of the cutting, marking, driving or floating, scaling or other measurement, manufacture into lumber, and sale of logs

Contracts, liens, and remedies relating thereto
Organization, franchises, and powers of log or boom companies, and their rights and liabilities in respect to floatage of logs

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Indian lands, cutting and sale of timber on, see INDIANS ¶195

Injuries to riparian proprietors by floating logs, see WATER LAW

Obstructions of navigation by booms, rafts, etc., see WATER LAW

1. Right to cut and remove timber.
 - 1.1. — In general.
2. — Sales and conveyances of timber lands.
3. — Sales and conveyances of standing timber.

245. LOGS AND LOGGING

- (.5). In general.
- (1). Requisites and validity of contracts and conveyances.
- (2). Recording.
- (3). Representations as to quantity or quality.
- (4). Representations as to value.
- (5). Modification, abandonment, or rescission of contract.
- (6). Executed or executory contracts.
- (7). Construction and operation of contracts in general.
- (8). Covenants and warranties.
- (9). Exceptions, reservations, or conditions.
- (10). Construction of contract as to quantity, kind, size, or location of timber sold.
- (11). Construction of contract as to time for removal of timber.
- (12). Bona fide purchasers.
- (13). Payment of price and lien therefor.
- (14). Effect of failure to cut or remove timber.
- (15). Actions.
- 4. — Licenses; severance taxes.
- 5. — Effect of severance of timber from land.
- 6. Cutting and hauling logs.
- 6.1. — In general.
- 7. — Statutory regulations.
- 8. — Contracts.
- (.5). In general.
- (1). Construction and operation.
- (2). Abandonment.
- (3). Performance or breach.
- (4). Maintenance of highways or railroads.
- (5). Actions for breach.
- 9. Marks and brands.
- 10. Scaling or other measurement.
- (.5). In general.
- (1). Agreements as to measurement.
- (2). Public inspectors and surveyors.
- (3). Evidence.
- (4). Questions for jury.
- (5). Instructions.
- 11. Driving, floating, or rafting logs.
- 11.1. — In general.
- 12. — Use of streams for floatage.
- 13. — Sluice dams, booms, and boom or driving companies.
- 14. — Tolls and other charges.
- 15. — Contracts.
- (.5). In general.
- (1). Construction and operation in general.
- (2). Compensation.
- (3). Modification.
- (4). Performance or breach.
- (5). Actions for breach.
- 16. — Intermingling and confusion.
- 17. — Compensation for driving intermingled or obstructing logs.
- 18. — Stranded and lost logs and salvage.
- 19. — Injuries incident to driving or rafting.
- 20. — Liabilities of proprietors of booms.
- (1). In general.
- (2). Actions.
- 21. Sawing and manufacturing logs.
- 22. Liens on logs and lumber.
- 22.1. — In general.
- 23. — Nature and grounds in general.
- 24. — Statutory provisions.
- 25. — Property subject.
- 26. — Services, supplies, or advances.
- (.5). In general.
- (1). Inspecting and scaling logs.
- (2). Cutting, driving, rafting, or hauling logs.
- (3). Sawing and manufacturing.
- (4). Building or repairing road or passageway.
- (5). Furnishing board, supplies, or advances.
- (6). Labor or service.
- (7). Labor of teams.
- (8). Removal of obstructions.
- 27. — Persons entitled.
- (.5). In general.
- (1). Cutting, driving, rafting, or hauling.
- (2). Sawing and manufacturing.
- (3). Supplies.
- (4). Contractors.
- (4.5). Subcontractors and employees of contractors.
- (5). Laborers.

245. LOGS AND LOGGING

- 28. — Proceedings to obtain or perfect.
- 29. — Amount and extent.
- 30. — Priorities.
- 31. — Removal or destruction of or injury to logs or lumber.
- 32. — Waiver, loss, or discharge.
- 33. — Enforcement.
 - (.5). In general.
 - (1). Nature and form of remedy.
 - (2). Conditions precedent.
 - (3). Jurisdiction and venue.
 - (4). Time to sue and limitations.
See also *LIMITATION OF ACTIONS*.
 - (5). Parties.
 - (6). Process and service.
 - (7). Attachment.
 - (8). Pleading and evidence.
 - (9). Affidavits for foreclosure.
 - (9.5). Questions for jury and instructions.
 - (10). Verdict and findings.
 - (11). Judgment.
 - (12). Execution.
 - (13). Fees and costs.
- 34. Sale of logs or lumber.
See also *SALES*.
 - (.5). In general.
 - (1). Contracts of sale.
 - (2). Actions relating to sale.
- 35. Conversion of logs or lumber.
- 36. Penalties for violations of regulations.
- 37. Offenses incident to logging.

246. LOST INSTRUMENTS

SUBJECTS INCLUDED

Instruments in writing lost or destroyed
Proceedings to restore, establish, or recover on such instruments, and indemnity as a condition thereof

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Finders of lost instruments in general, rights and liabilities, see **ABANDONED AND LOST PROPERTY**

Lost negotiable paper—

Banks' rights and liabilities, see **FINANCE, BANKING, AND CREDIT IV**

Finders' rights and liabilities, see **BILLS AND NOTES**

Lost or destroyed records, restoration or establishment, see **RECORDS**

Lost wills, probate of, see **WILLS**

Secondary evidence of contents of lost writings, see **EVIDENCE**

- 1. Loss of written instrument.
- 2. Establishment and restoration.
 - 2.1. — In general.
- 3. — Nature and form of remedy.
- 4.5. — Indemnity.
- 5. — Jurisdiction.
- 6. — Parties.
- 7. — Pleading.
- 8. — Evidence.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility.
 - (3). Weight and sufficiency.
- 9. — Hearing or reference.
- 10. — Judgment or decree and review.
- 11. — Costs.
- 12. Compelling re-execution.
- 13. Actions on lost instruments.
 - 13.1. — In general.
- 14. — Nature and form.
- 15. — Statutory provisions.
- 16. — Right of action in general.
- 17. — Affidavit of loss.
- 18. — Indemnity.
- 19. — Defenses.
- 20. — Jurisdiction.
- 21. — Parties.
- 22. — Pleading.
- 23. — Evidence.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility.
 - (3). Weight and sufficiency.
- 24. — Trial, judgment, and review.
- 25. — Costs.

249. MALICIOUS PROSECUTION

248. MALICIOUS MISCHIEF

SUBJECTS INCLUDED

Willful physical injury to or destruction of property in general, real or personal, from ill will or resentment towards the owner or possessor, or from mere wantonness

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Fire, injuries by, see ARSON, FIRES

Mere trespasses on real property, see TRESPASS

Particular kinds of property, injury to, see PUBLIC LANDS, RAILROADS, ANIMALS, and other specific topics

1. Nature and elements of offenses.
2. Defenses.
3. Indictment or information.
 - 3.1. — In general.
4. — Requisites and sufficiency.
5. — Issues, proof, and variance.
6. Evidence.
 - 6.1. — In general.
7. — Presumptions and burden of proof.
8. — Admissibility.
9. — Weight and sufficiency.
10. Trial.
12. Sentence and punishment.

249. MALICIOUS PROSECUTION

SUBJECTS INCLUDED

Institution of judicial proceedings civil or criminal, against another, maliciously and without probable cause therefor

Justification or excuse for such prosecution

Liabilities and remedies therefor, civil or criminal

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Abuse of process by perverting it to an improper purpose, see PROCESS

Wrongful attachment, see CREDITORS' REMEDIES

Wrongful execution, see CREDITORS' REMEDIES

- I. NATURE AND COMMENCEMENT OF PROSECUTION, ¶0.5-14.
- II. WANT OF PROBABLE CAUSE, ¶15-25.
- III. MALICE, ¶26-33.
- IV. TERMINATION OF PROSECUTION, ¶34-37.
- V. ACTIONS, ¶38-77.
- VI. CRIMINAL RESPONSIBILITY, ¶78-79.

I. NATURE AND COMMENCEMENT OF PROSECUTION.

- 0.5. Nature and elements of malicious prosecution in general.
- 0.6. What law governs.
- 0.7. Preemption.
 1. Judicial character of proceeding.
 2. Jurisdiction of court or magistrate.
 3. Instigation of or participation in prosecution.
 4. Institution or continuation of prosecution.
5. Criminal prosecutions.
 - 5.1. — In general.
6. — Nature of charge.
7. — Mode and sufficiency of proceeding and necessity of arrest.
8. — Commencement and course of proceeding.
9. Civil actions.
10. — In general.
11. — Necessity of arrest of person or seizure of property.
12. Civil proceedings other than actions.
13. Actions and proceedings in rem.
14. Injury from prosecution.

II. WANT OF PROBABLE CAUSE.

15. Necessity.
16. Concurrence of other elements.
17. Criminal prosecutions.
 - 17.1. — In general.

249. MALICIOUS PROSECUTION

II. WANT OF PROBABLE CAUSE.(Cont'd)

18. — Grounds in general.
 - (1). In general.
 - (2). Acts and conduct of accused evidence of probable cause in general.
 - (3). Possession of stolen property.
 - (4). Acts and conduct of defendant evidence of want of probable cause in general.
 - (5). Personal knowledge and statements of others.
 - (6). Time of acquiring knowledge or receiving information.
 - (7). Preliminary investigations by prosecutor.
19. — Actual guilt or innocence of accused.
20. — Belief in guilt of accused.
21. — Advice of counsel.
 - (1). In general.
 - (2). Good faith in making statement of facts to counsel and acting on advice.
22. — Advice of prosecuting officer or magistrate.
23. — Inference from malice.
24. — Inference from result of prosecution.
 - (1). In general.
 - (2). Acquittal.
 - (3). Discontinuance and discharge.
 - (4). Conviction.
 - (5). Conviction and subsequent discharge or acquittal.
 - (6). Result of preliminary examination.
 - (7). Finding of grand jury.
25. Civil actions and proceedings.
 - (1). In general.
 - (2). Advice of counsel.
 - (3). Inference from result of action.

III. MALICE.

26. Necessity.
27. Nature and elements.
28. Express malice.
29. Implied malice in general.
30. Motive of prosecution.
31. Acts and conduct evidence of malice.

III. MALICE.(Cont'd)

32. Inference from want of probable cause.
33. Inference from result of prosecution.

IV. TERMINATION OF PROSECUTION.

34. Necessity.
35. Mode of termination.
 - (1). In general.
 - (2). Compromise and settlement.
36. Finality of determination.
37. Scope and effect of determination.

V. ACTIONS.

38. Nature and form of remedy.
39. Grounds of action.
40. Defenses.
41. Persons entitled to sue.
42. Persons liable.
43. Jurisdiction and venue.
44. Time to sue and limitations.
See also LIMITATION OF ACTIONS.
45. Parties.
46. Pleading.
- 46.1. — In general.
47. — Requisites and sufficiency in general.
48. — Description of prosecution.
49. — Want of probable cause.
50. — Malice.
51. — Termination of prosecution.
52. — Damage.
53. — Matters of defense.
54. — Amended and supplemental pleadings.
55. — Issues, proof, and variance.
56. Presumptions and burden of proof.
57. Admissibility of evidence.
58. — In general.
 - (1). In general.
 - (2). Character and reputation of plaintiff.
 - (3). Evidence as to former trial, or proceeding.
59. — Probable cause.
 - (1). In general.
 - (2). Statements and declarations of parties.
 - (3). Statements of third persons.

250. MANDAMUS

V. ACTIONS.(Cont'd)

- (4). Character and reputation of plaintiff.
 - (5). Acts and conduct of accused in general.
 - (6). Evidence of other offenses.
 - (7). Evidence as to former trial or proceeding.
 - (8). Guilt or innocence of accused.
 - (9). Belief in guilt of accused.
 - (10). Advice of counsel.
60. — Malice.
- (1). In general.
 - (2). Previous relations between parties.
 - (3). Acts, conduct, and declarations of parties.
 - (4). Advice and statement of counsel.
 - (5). Evidence as to prosecutions complained of or other actions and proceedings.
61. — Termination of prosecution.
62. — Extent of injury.
63. — Mitigation of damages.
64. Weight and sufficiency of evidence.
- (1). In general.
 - (2). Probable cause and malice.
65. Damages.
- 65.1. — In general.
66. — Measure in general.
67. — Elements of compensation.
68. — Exemplary.
69. — Amount awarded.
71. Questions for jury.
- (1). In general.
 - (2). Probable cause.
 - (3). Malice.
 - (4). Advice of counsel, prosecuting officer, or magistrate.
 - (5). Termination of prosecution.
72. Instructions.
- (1). In general.
 - (2). Probable cause.
 - (3). Advice of counsel, prosecuting officer, or magistrate.
 - (4). Malice.
 - (5). Damages.
73. Verdict and findings.
74. New trial.

V. ACTIONS.(Cont'd)

- 75. Judgment.
- 76. Appeal and error.
- 77. Costs.

VI. CRIMINAL RESPONSIBILITY.

- 78. Nature and elements of offenses.
- 79. Prosecution and punishment.

250. MANDAMUS

SUBJECTS INCLUDED

Writs of mandamus or of mandate commanding performance of specific acts by inferior courts or other tribunals, judges, boards, officers, or corporations, and actions in the nature of such writs

Nature and scope of the remedy in general

Grounds of such writs or actions and defenses thereto

To and against whom and to compel performance of what acts they are allowed

Jurisdiction to grant and proceedings to obtain the writ

Issuance of alternative or peremptory writs, requisites, and validity thereof, service thereof, return to alternative writs, and proceedings thereon

In actions for mandamus, judgments or orders and enforcement thereof

Review of proceedings and costs

Disobedience to such writs

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Conflicting jurisdiction of particular courts, see COURTS

Federal courts, mandamus in general, see FEDERAL COURTS

Mandates to lower courts on decisions of appeals, etc., see APPEAL AND ERROR and FEDERAL COURTS

Mandatory injunction, see INJUNCTION

Other remedies or proceedings, mandamus incidental to, see APPEAL AND ERROR,

250. MANDAMUS

EXCEPTIONS, BILL OF, and other specific topics

I. NATURE AND GROUNDS IN GENERAL, §§1-23.

II. SUBJECTS AND PURPOSES OF RELIEF, §§24-140.

(A) ACTS AND PROCEEDINGS OF COURTS, JUDGES, AND JUDICIAL OFFICERS, §§24-62.

(B) ACTS AND PROCEEDINGS OF PUBLIC OFFICERS AND BOARDS AND MUNICIPALITIES, §§63-121.

(C) ACTS AND PROCEEDINGS OF PRIVATE CORPORATIONS AND INDIVIDUALS, §§122-140.

III. JURISDICTION, PROCEEDINGS, AND RELIEF, §§141-190.

I. NATURE AND GROUNDS IN GENERAL.

1. Nature and scope of remedy in general.
2. Constitutional and statutory provisions.
3. Existence and adequacy of other remedy in general.
 - (1). In general.
 - (2). Remedy at law.
 - (2.1). — In general.
 - (3). — Acts and proceedings of courts, judges, and judicial officers.
 - (4). — Acts and proceedings of public officers and boards and municipalities in general.
 - (5). — Counties or towns and their boards or officers.
 - (6). — Issue of warrants and payment thereof or of claims.
 - (7). — Acts and proceedings of private corporations and individuals.
 - (8). Statutory or administrative remedies.
 - (9). Remedy in equity.
 - (10). Remedy by quo warranto.
 - (11). Remedy by motion or other proceeding in pending cause in general.
 - (12). Remedy by certiorari.
 - (13). Remedy by motion for new trial.
4. Remedy by appeal or writ of error.
 - (1). In general.

I. NATURE AND GROUNDS IN GENERAL.(Cont'd)

- (2). Rulings as to pleadings.
- (3). Motions and orders in general.
- (4). Modification or vacation of judgment or order.
- (5). Acts of officers, boards, or private corporations.
5. Recourse to or pendency of other proceeding.
6. Conflict or interference with other proceeding.
- 6.5. Adequacy of remedy by mandamus.
7. Discretion as to grant of writ.
8. Joinder of proceedings.
9. Successive writs or proceedings.
10. Nature and existence of rights to be protected or enforced.
11. Nature of questions involved.
12. Nature of acts to be commanded.
13. Conditions precedent in general.
14. Demand.
 - (.5). In general.
 - (1). Necessity of demand.
 - (2). Requisites and sufficiency of demand.
 - (3). Refusal or default.
15. Defenses and grounds of opposition in general.
16. Mandamus ineffectual or not beneficial.
 - (1). In general.
 - (2). Expiration of term of office or adjournment of boards.
17. Abatement of proceedings.
18. — In general.
19. — Termination or devolution of right or office.
20. — Death of party.
21. Persons entitled to relief.
22. — In general.
23. — Interest in subject-matter.
 - (1). In general.
 - (2). Interest as citizens or taxpayers.

II. SUBJECTS AND PURPOSES OF RELIEF.

(A) ACTS AND PROCEEDINGS OF COURTS, JUDGES, AND JUDICIAL OFFICERS.

24. Courts and judicial officers subject to mandamus.
25. Judicial nature of acts or proceedings.

250. MANDAMUS

**II. SUBJECTS AND PURPOSES
OF RELIEF.(Cont'd)**

26. Exercise of judicial powers and functions in general.
27. Ministerial acts in general.
28. Matters of discretion.
29. Specific acts.
30. Holding court.
31. Entertaining and proceeding with cause.
32. Proceedings in civil actions in general.
33. Parties.
34. Process and notice.
35. Bonds and other securities.
36. Attachment and garnishment.
37. Injunction.
38. Receivers and sequestration.
39. Pleading.
40. Evidence, witnesses, and depositions.
41. Stipulations.
42. Motions and orders in general.
43. Dismissal or nonsuit, and reinstatement.
44. Change of venue and transfer of causes.
45. Continuance.
46. Trial by jury.
47. Reference.
48. Trial or hearing of cause or issues.
49. Reception and entry of verdict.
50. New trial or rehearing.
51. Signing or entry of judgment or order.
52. Modification of judgment or order.
53. Vacation of judgment or order.
54. Enforcement of judgment or order in general.
55. Execution.
56. Judicial sales.
57. Proceedings for review.
 - (1). In general.
 - (2). Fixing amount and approval of bond.
58. Enforcement of decision on review.
59. Award and taxation of costs.
60. Civil proceedings other than actions.
61. Criminal prosecutions.
62. Dockets, calendars, and records.

**(B) ACTS AND PROCEEDINGS OF PUBLIC
OFFICERS AND BOARDS AND
MUNICIPALITIES.**

63. Officers subject to mandamus in general.
64. State or national boards and officers.

**II. SUBJECTS AND PURPOSES
OF RELIEF.(Cont'd)**

65. County or town boards and officers.
66. Municipalities and municipal officers in general.
67. School boards, trustees, and officers.
68. Official character of acts or proceedings.
69. Legislative powers.
70. Judicial or quasi judicial powers and functions.
71. Ministerial acts in general.
72. Matters of discretion.
73. Specific acts.
 - (1). In general.
 - (2). Approval or acceptance of bonds.
 - (3). Admission of matter to mails.
 - (4). Apportionment of indebtedness between counties.
 - (5). Setting aside exemptions.
74. Elections and proceedings relating thereto.
 - (1). In general.
 - (2). Calling of election and registration of voters.
 - (3). Announcing candidacy, placing names on ballot, and filing and certifying ticket.
 - (4). Counting ballots and canvassing returns.
 - (5). Announcing or certifying results.
75. Acts and proceedings of civil service boards and commissions.
76. Appointment or removal of public officers or employees.
77. Title to and possession of office.
 - (1). In general.
 - (2). Administering oath and issuing commission or certificate.
 - (3). Possession of office and appurtenances.
 - (4). Restoration to office or employment.
78. Organization and location of local governments or authorities.
79. Establishment, maintenance, and management of schools.
80. Establishment, maintenance, and management of public institutions.
81. Meetings and proceedings of boards or other bodies.

250. MANDAMUS

II. SUBJECTS AND PURPOSES
OF RELIEF.(Cont'd)

- 82. Public records.
- 83. Public buildings and other property.
- 84. Contracts in general.
- 85. Proceedings relating to public lands.
- 86. Proceedings relating to patents.
- 87. Proceedings to procure and grant or re-
voke licenses, certificates, and permits.
- 88. Issuance and forfeiture of corporate char-
ters.
- 89. Public improvements.
- 89.1. — In general.
- 90. — Construction in general.
- 91. — Grants of public aid.
- 92. — Award of contracts.
- 93. — Performance of contracts.
- 94. — Maintenance and repair.
- 95. — Award and payment of damages.
- 96. — Levy of assessments and special tax-
es.
- 97. — Collection of assessments and spe-
cial taxes.
- 98. Establishment, vacation, regulation, and
use of highways and streets.
 - (.5). In general.
 - (1). Establishment and vacation.
 - (2). Removal of obstructions in streets
or highways.
 - (3). Use of streets.
- 99. Making and enforcement of police and
zoning regulations.
- 100. Appropriation or other disposition of
public money.
- 101. Audit and allowance of accounts and
claims.
- 102. Issue of warrants or orders for payment.
 - (1). In general.
 - (2). Claims of public officers and em-
ployees.
- 103. Issue of bonds or other securities.
- 104. Payment of debts and claims.
- 105. — In general.
- 106. — Appropriations and special funds.
- 107. — Salaries and wages.
- 108. — Claims allowed or approved.
- 109. — Warrants or orders.
- 110. — Bonds or other securities.
- 111. — Judgments.
- 112. Levy of taxes.

II. SUBJECTS AND PURPOSES
OF RELIEF.(Cont'd)

- 112.1. — In general.
- 113. — Purposes in general.
- 114. — Payment of claims, warrants, or or-
ders.
- 115. — Payment of bonds or other securi-
ties.
- 116. — Payment of judgments.
- 117. Assessment of taxes.
- 118. Payment and refunding of taxes.
- 119. Collection of taxes.
- 120. Redemption from tax sales.
- 121. Disposition of taxes collected.
- (C) ACTS AND PROCEEDINGS OF PRIVATE
CORPORATIONS AND INDIVIDUALS.
- 122. Corporations and associations subject to
mandamus.
- 123. Organization of corporation or associa-
tion.
- 124. Admission to membership in corporation
or association.
- 125. Reinstatement of member of corpora-
tion or association expelled or sus-
pended.
- 126. Issue, transfer, and redemption of stock.
- 127. Corporate meetings and elections.
- 128. Title to and possession of corporate of-
fice.
- 129. Custody of and access to corporate rec-
ords and books.
- 130. Exercise of corporate franchises and
powers.
- 131. — In general.
- 132. — Construction and maintenance of
works.
- 133. — Operation of works, and public
service and accommodation.
- 134. — Charges, tolls, and other compen-
sation.
- 135. Management of corporate affairs.
- 136. — In general.
- 137. — Matters of discretion or of quasi
judicial character.
- 138. Performance of corporate contracts.
- 139. Franchises, privileges, and duties of for-
eign corporations.
- 140. Individual duties and obligations.

250. MANDAMUS

III. JURISDICTION, PROCEEDINGS,
AND RELIEF.

- 141. Jurisdiction and authority.
- 142. Venue.
- 143. Time to sue, limitations, and laches.
 - (1). In general.
See also LIMITATION OF ACTIONS.
 - (2). Laches.
- 144. Parties plaintiff or petitioners.
- 145. — In general.
- 146. — Use of name of state.
- 147. — Public officers.
- 148. — Private persons.
- 149. — Joinder.
- 150. Parties defendant or respondents.
- 151. — In general.
 - (1). In general.
 - (2). Public officers and boards and municipalities.
- 152. — Joinder.
- 153. New parties.
- 154. Petition or complaint, or other application.
 - (1). In general.
 - (2). Form, requisites, and sufficiency in general.
 - (3). Certainty and definiteness.
 - (4). Right of petitioner, and authority, duty, or power of respondent, in general.
 - (5). Allegations relating to elections and appointment to or removal from office.
 - (6). Allegations showing official character.
 - (7). Demand and refusal or default.
 - (8). Prayer for relief.
 - (9). Verification.
 - (10). Amendment.
- 155. Affidavits.
 - (.5). In general.
 - (1). Supporting affidavits.
 - (2). Opposing affidavits.
- 155.5. Bill of exceptions.
- 156. Process in general.
- 157. Notice or rule to show cause.
- 158. Alternative writ.
- 158.1. — In general.
- 159. — Nature and grounds.
- 160. — Issuance, form, and requisites.

III. JURISDICTION, PROCEEDINGS,
AND RELIEF.(Cont'd)

- (1). In general.
- (2). Allegations showing right of relator.
- (3). Demand and refusal.
- (4). Conclusions.
- (5). Direction to persons sought to be coerced.
- (6). Commands in writ.
- (7). Amendment and cure of defects.
- 161. — Service.
- 162. Motion to quash or dismiss alternative writ.
- 163. Demurrer to petition or complaint, or to alternative writ.
- 164. Return or answer.
 - (1). In general.
 - (2). Form, requisites, and sufficiency in general.
 - (3). Denials and failure to deny.
 - (4). Conclusiveness and effect.
 - (5). Amendment.
- 165. Demurrer to return or answer.
- 166. Replication or reply and rejoinder.
- 166.5. Demurrer to replication or reply.
- 167. Issues, proof, and variance.
- 168. Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility of evidence.
 - (4). Weight and sufficiency.
- 169. Dismissal before hearing.
- 170. Mode of trial in general.
- 171. Proceedings preliminary to hearing or trial.
- 172. Scope of inquiry and powers of court.
- 173. Conduct of hearing or trial.
- 174. Determination of issues and questions.
- 175. New trial or rehearing.
- 176. Scope and extent of relief in general.
- 177. Award and assessment of damages.
- 178. Judgment or order.
- 179. Peremptory writ.
- 179.1. — In general.
- 180. — Nature and grounds.

250. MANDAMUS

III. JURISDICTION, PROCEEDINGS, AND RELIEF.(Cont'd)

181. — Proceedings to procure.
- (.5). In general.
- (1). Application and supporting affidavits.
- (2). Notice.
- (3). Issuance on default.
- (4). Denial or justification of facts.
- (5). Grant of alternative writ on denial of application.
- (6). Alias writs.
182. — Issuance, form, and requisites.
183. — Service.
- 183.5. — Return or certificate.
184. — Operation and effect.
185. Performance and enforcement of command.
186. Violation and punishment.
187. Appeal and error.
- 187.1. — In general.
- 187.2. — Decisions reviewable and proper mode of review.
- 187.3. — Right of review.
- 187.4. — Presentation and reservation in lower court of grounds of review.
- 187.5. — Requisites and proceedings for transfer of cause.
- 187.6. — Supersedeas or stay of proceedings.
- 187.7. — Record and assignments of error.
- 187.8. — Dismissal of appeal.
- 187.9. — Review.
- (.5). In general.
- (1). Scope and extent in general.
- (2). Questions considered.
- (3). Parties entitled to allege error.
- (4). Presumptions.
- (5). Discretion of lower court.
- (6). Questions of fact.
- (7). Harmless error.
- 187.10. — Determination and disposition of cause.
188. Certiorari to review proceedings.
189. Mandamus to review proceedings.
190. Costs.

251. MANUFACTURES

SUBJECTS INCLUDED

Promotion and regulation of manufacturing industries in general

Public aid and protection to those engaged therein, either individuals or manufacturing companies

Rights and remedies incidental thereto

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Corporate matters analogous to those of corporations generally, see CORPORATIONS AND BUSINESS ORGANIZATIONS

Eminent domain, exercise of power, see EMINENT DOMAIN

Employer-employee relations, see LABOR AND EMPLOYMENT

Health and safety regulations, see HEALTH and ENVIRONMENTAL LAW

Licenses and mercantile taxes, see LICENSES

Particular motive powers, use of, see GAS, ELECTRICITY, STEAM

Taxes on property, see TAXATION

1. Constitutional and statutory provisions.
2. Rights, privileges, and regulations of public mills.

252. MARITIME LIENS

SUBJECTS INCLUDED

Liens created by maritime law or by statute on vessels, more particularly such liens as security for the price or value of services rendered or supplies furnished to vessels, or for repayment of moneys advanced to them

Nature and grounds of such liens

What vessels or other property may be subject to such liens, and by whom or for what purposes they may be subjected thereto

Who may be entitled to the benefit of such liens

252. MARITIME LIENS

How the liens may be acquired, and waiver, discharge, or extinguishment thereof

Priorities of such liens

Enforcement of maritime liens in general

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Admiralty jurisdiction and procedure, see ADMIRALTY

Damages for injuries by collision or other torts, liens for, see SHIPPING

Master's lien for wages, etc., see SHIPPING

Mortgages of vessels, bottomry, and respondentia, see SHIPPING

Mutual liens of vessel and cargo, see SHIPPING

Salvage services, lien for, see SALVAGE

Services incident to particular occupations, liens for, see SEAMEN, PILOTS, TOWAGE

I. NATURE, GROUNDS, AND SUBJECT-MATTER IN GENERAL, ¶1-25.5.

(A) UNDER MARITIME LAW, ¶1-15.

(B) UNDER STATUTORY PROVISIONS, ¶16-25.5.

II. CREATION, OPERATION, AND EFFECT, ¶26-54.

III. ENFORCEMENT, ¶55-75.

(A) IN ADMIRALTY, ¶55-70.

(B) STATUTORY REMEDIES, ¶71-75.

I. NATURE, GROUNDS, AND SUBJECT-MATTER IN GENERAL.

(A) UNDER MARITIME LAW.

1. Nature of lien in general.
2. What law governs.
3. Vessels and other property subject to lien in general.
4. Ownership, charter, or possession of vessel.
5. Vessel in home or foreign port.
6. Persons who may obtain lien.
7. Necessity for services, supplies, or advances.
8. Necessity for credit to vessel.
9. Maritime services in general.
10. Construction and equipment.
11. Repairs and materials.
12. Supplies.
13. Insurance premiums.

I. NATURE, GROUNDS, AND SUBJECT-MATTER IN GENERAL.(Cont'd)

14. Advances.
15. Guaranties.

(B) UNDER STATUTORY PROVISIONS.

16. Power to impose or authorize liens.
17. Constitutional and statutory provisions.
18. Existence and effect of lien under maritime law.
19. Vessels and other property subject to lien.
20. Vessel in home port.
21. Ownership, charter, or possession of vessel.
22. Persons who may obtain lien.
23. Necessity for services, supplies, or advances.
24. Necessity of credit to vessel.
25. Services, supplies, repairs, or materials.
- 25.5. Advances.

II. CREATION, OPERATION, AND EFFECT.

26. Requisites and creation in general.
27. Rendering or furnishing of services, supplies, or advances.
28. Agreement or consent of owner, charterer, or master of vessel.
29. Transactions with persons other than owner, charterer, or master of vessel.
30. Notice of circumstances affecting right to lien.
31. Persons entitled to lien.
32. Proceedings to perfect statutory lien.
33. Amount and extent of lien.
34. Commencement and duration of lien.
35. Property and rights affected.
36. Priorities.
- 36.1. — In general.
37. — Liens under maritime law.
 - (1). In general.
 - (2). Institution of legal proceedings for enforcement.
 - (3). Between maritime and statutory liens.
 - (4). Mortgages and bottomry bonds.
 - (5). Seamen's and master's wages.
 - (6). Maritime torts.
 - (7). Loss of priority.
38. — Statutory liens.
39. Assignment of lien or claim.

252. MARITIME LIENS

II. CREATION, OPERATION, AND EFFECT.(Cont'd)

- 40. Waiver, loss, or discharge.
- 40.1. — In general.
- 41. — Express waiver.
- 42. — Giving credit.
- 43. — Taking bill or note.
- 44. — Taking collateral security.
- 45. — Destruction of vessel.
- 46. — Departure of vessel.
- 47. — Transfer of title in general.
- 48. — Forfeiture, seizure, or judicial sale.
- 49. — Delay in assertion of lien in general.
- 50. — Delay in assertion of lien against bona fide purchasers.
- 51. — Discharge from personal liability.
- 52. — Discharge on giving security.
- 53. — Release.
- 54. — Payment or tender of debt.

III. ENFORCEMENT.

(A) IN ADMIRALTY.

- 55. Nature and form of remedy.
- 56. — In general.
- 57. — Liens under state statutes.
- 58. Grounds of action.
- 59. Defenses.
- 60. Jurisdiction.
- 61. Time for proceedings, limitations, and laches.
See also LIMITATION OF ACTIONS.
- 62. Parties.
- 63. Process.
- 64. Pleading.
- 65. Evidence.
- 66. Hearing or trial.
- 67. Decree.
- 68. Sale.
- 69. Disposition of proceeds.
- 70. Appeal.

(B) STATUTORY REMEDIES.

- 71. Nature and form in general.
- 72. Retention of possession.
- 73. Attachment.
- 74. Actions against vessels or owners.
- 75. Actions on bonds.

253. MARRIAGE AND COHABITATION

SUBJECTS INCLUDED

- Nature, creation, existence, validity, and annulment of the marriage relation
- Rights, powers, duties, and liabilities of married persons as between themselves and as to others, incident to the existence of the relation or arising from conveyances or agreements in consideration or in consequence of marriage
- Legal proceedings affecting married persons and their property
- Adultery, bigamy, and other offenses concerning the relation
- Enforcement of spousal support obligation outside the context of divorce proceedings
- Civil unions, domestic partnerships, and similar alternatives to marriage

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Children and relation of parents thereto, see ADOPTION, CHILD CUSTODY, CHILD SUPPORT, INFANTS, PARENT AND CHILD
- Dissolution of marriage, see DIVORCE
- Divorce, see DIVORCE
- Dower and curtesy, see DESCENT AND DISTRIBUTION IV
- Fraudulent conveyances, see FRAUDULENT CONVEYANCES
- Homestead rights and exemptions, see HOMESTEAD
- Judicial separation, see DIVORCE
- Seduction as a tort or criminal offense, with or without promise to marry, see SEDUCTION
- Separation agreements, see DIVORCE
- Spousal privilege, see PRIVILEGED COMMUNICATIONS AND CONFIDENTIALITY II(B)
- Spousal support obligation, enforcement in divorce context, see DIVORCE
- Surviving spouse's property rights, see DESCENT AND DISTRIBUTION, HOMESTEAD III, WILLS
- Testamentary capacity, see WILLS II

253. MARRIAGE AND COHABITATION

Witnesses, competency of spouses to testify for or against each other, see WITNESSES
⌚51

I. IN GENERAL, ⌚101-120.

II. AGREEMENTS CONCERNING MARRIAGE, ⌚121-200.

- (A) IN GENERAL, ⌚121-130.
- (B) AGREEMENTS TO MARRY; BREACH OF MARRIAGE PROMISE, ⌚131-160.
- (C) PREMARITAL AGREEMENTS, ⌚161-200.

III. CREATION, EXISTENCE, AND VALIDITY OF MARITAL RELATIONSHIP, ⌚201-400.

- (A) IN GENERAL; REQUISITES AND ESSENTIALS, ⌚201-250.
- (B) VALIDITY AND EFFECT OF FOREIGN MARRIAGE, ⌚251-260.
- (C) EFFECT OF IMPROPER MARRIAGE; VOID OR VOIDABLE MARRIAGE, ⌚261-290.
- (D) DURATION AND TERMINATION OF MARRIAGE IN GENERAL, ⌚291-299.
- (E) ACTIONS AND PROCEEDINGS IN GENERAL, ⌚300-310.
- (F) ANNULMENT AND ANNULMENT PROCEEDINGS, ⌚311-350.
- (G) EVIDENCE, ⌚351-390.
- (H) QUESTIONS OF LAW OR FACT, ⌚391-394.
- (I) INSTRUCTIONS, ⌚395-400.

IV. MARITAL RIGHTS, DUTIES, AND LIABILITIES IN GENERAL, ⌚401-750.

- (A) IN GENERAL, ⌚401-420.
- (B) PROPERTY IN GENERAL, ⌚421-510.
 - 1. IN GENERAL, ⌚421-450.
 - 2. JOINT TENANCY, ⌚451-460.
 - 3. TENANCY IN COMMON, ⌚461-470.
 - 4. TENANCY BY ENTIRETY, ⌚471-500.
 - 5. RIGHTS, DUTIES, AND LIABILITIES OF SPOUSES AS TO PROPERTY, ⌚501-510.
- (C) CONTRACTS IN GENERAL, ⌚511-530.
- (D) DEBTS, EXPENSES, AND RIGHTS OF CREDITORS IN GENERAL, ⌚531-570.
- (E) NECESSARIES AND FAMILY EXPENSES, ⌚571-590.

IV. MARITAL RIGHTS, DUTIES, AND LIABILITIES IN GENERAL—Cont'd

- (F) PROPERTY TRANSACTIONS BY SPOUSES, ⌚591-620.
 - (G) AGENCY, ⌚621-640.
 - (H) TRANSACTIONS BETWEEN SPOUSES, ⌚641-690.
 - (I) RIGHTS OF ACTION AND DEFENSES, ⌚691-720.
 - (J) PROCEEDINGS, ⌚721-750.
- ### V. COMMUNITY PROPERTY, ⌚751-1070.
- (A) IN GENERAL, ⌚751-770.
 - (B) PROPERTY SUBJECT TO COMMUNITY; CHARACTERIZATION, ⌚771-890.
 - 1. IN GENERAL, ⌚771-790.
 - 2. PARTICULAR PROPERTY, ⌚791-820.
 - 3. PARTICULAR CIRCUMSTANCES OF ACQUISITION OR POSSESSION, ⌚821-850.
 - 4. EVIDENCE, ⌚851-880.
 - 5. QUESTIONS OF LAW OR FACT, ⌚881-890.
 - (C) RIGHTS, DUTIES, AND LIABILITIES OF SPOUSES AS TO PROPERTY, ⌚891-900.
 - (D) DEBTS, EXPENSES, AND RIGHTS OF CREDITORS, ⌚901-920.
 - (E) PROPERTY TRANSACTIONS BY SPOUSES, ⌚921-950.
 - (F) TRANSACTIONS BETWEEN SPOUSES, ⌚951-980.
 - (G) REIMBURSEMENT RIGHTS BETWEEN SPOUSES, ⌚981-1000.
 - (H) RIGHTS OF ACTION AND DEFENSES, ⌚1001-1010.
 - (I) PROCEEDINGS, ⌚1011-1040.
 - (J) DESCENT AND DISTRIBUTION, ⌚1041-1070.

VI. TORTS, ⌚1071-1130.

- (A) IN GENERAL, ⌚1071-1100.
- (B) ALIENATION OF AFFECTIONS, ⌚1101-1120.
- (C) ADULTEROUS CONDUCT; CRIMINAL CONVERSATION, ⌚1121-1130.

VII. OFFENSES, ⌚1131-1200.

- (A) IN GENERAL, ⌚1131-1140.
- (B) ADULTERY, ⌚1141-1160.
- (C) COHABITATION, ⌚1161-1170.
- (D) BIGAMY AND POLYGAMY, ⌚1171-1200.

VIII. ENFORCEMENT OF SUPPORT OBLIGATION, ⌚1201-1260.

IX. MARRIAGE ALTERNATIVES, ⌚1261-1278.

253. MARRIAGE AND COHABITATION

I. IN GENERAL.

- 101. In general.
- 102. Right to marry or cohabit in general.
- 103. Regulation and control in general.
- 104. Constitutional provisions, statutes, and ordinances in general.
- 105. What law governs.
- 106. — In general.
- 107. — Premarital agreements.
- 108. — Persons who may marry; same-sex marriage.
- 109. — Marital rights, duties, and liabilities.
 - (1). In general.
 - (2). Community property.
 - (3). Torts.
- 110. — Offenses.
- 111. — Enforcement of support obligation.
- 112. — Marriage alternatives.
 - (1). In general.
 - (2). Same-sex relationships.
- 113. Federal preemption.
- 114. — In general.
- 115. — Premarital agreements.
- 116. — Persons who may marry; same-sex marriage.
- 117. — Marital rights, duties, and liabilities.
- 118. — Community property.
- 119. Actions and proceedings in general.

II. AGREEMENTS CONCERNING MARRIAGE.

(A) IN GENERAL.

- 121. In general.
- 122. Agreements restraining or derogating marriage in general.
- 123. Agreements facilitating or promoting termination of marriage.
- 124. Agreements arranging or brokering marriage.

(B) AGREEMENTS TO MARRY; BREACH OF MARRIAGE PROMISE.

- 131. In general.
- 132. Requisites and formation.
- 133. — In general.
- 134. — Capacity and character of parties.
- 135. — Offer and acceptance.
- 136. — Consideration and mutuality.

II. AGREEMENTS CONCERNING MARRIAGE.(Cont'd)

- 137. Validity and enforceability.
- 138. Terms of agreement; rights and obligations of parties.
- 139. — In general.
- 140. — Construction in general.
- 141. — Performance and breach in general.
- 142. — Particular cases and issues.
- 143. Modification or rescission.
- 144. Right of action; effect of statute.
- 145. — In general.
- 146. — Particular cases and agreements.
- 147. Nature and form of action.
- 148. Conditions precedent to action.
- 149. Defenses.
- 150. Proceedings.
- 151. — In general.
- 152. — Time for proceedings; limitations and laches.
- 153. — Pleading.
- 154. — Evidence.
 - (1). In general; admissibility.
 - (2). Presumptions, inferences, and burden of proof.
 - (3). Character and conduct of parties.
 - (4). Weight and sufficiency.
- 155. — Damages.
 - (1). In general.
 - (2). Aggravation, mitigation, and reduction of loss.
 - (3). Punitive or exemplary damages.
 - (4). Amount awarded.
- 156. — Trial or hearing.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Instructions.
 - (4). Verdict, findings, and conclusions.

(C) PREMARITAL AGREEMENTS.

Postnuptial agreements and settlements, see IV(H).

- 161. In general.
- 162. Requisites and formation.
- 163. — In general.
- 164. — Consideration.
- 165. — Execution, acknowledgment, and delivery.
- 166. — Registration and recording.
- 167. Validity and enforceability.

253. MARRIAGE AND COHABITATION

**II. AGREEMENTS CONCERNING
MARRIAGE.(Cont'd)**

- 168. — In general.
- 169. — Public policy.
- 170. — Unconscionability.
- 171. — Knowledge and disclosure.
 - (1). In general.
 - (2). Schedule or description of property.
- 172. — Fraud and misrepresentation.
- 173. — Duress, coercion, and undue influence.
- 174. — Legal representation or advice.
- 175. — Adequacy of provision for spouse.
- 176. — Changed circumstances.
- 177. — Effect of invalidity; severability.
- 178. Terms of agreement; rights and obligations of parties.
- 179. — In general.
- 180. — Construction and operation in general.
- 181. — Performance and breach in general.
- 182. — Particular cases and contexts.
 - (1). In general.
 - (2). Estate created or interest conferred.
 - (3). Property included or affected.
 - (4). Rights of survivor.
 - (5). Rights of children or heirs.
 - (6). Rights of creditors and third persons.
 - (7). Effect of subsequent misconduct.
- 183. Modification.
- 184. Revocation or extinguishment.
- 185. Actions and proceedings.
- 186. — In general.
- 187. — Pleading or motion.
- 188. — Evidence.
 - (1). In general; admissibility.
 - (2). Presumptions, inferences, and burden of proof.
 - (3). Degree of proof.
 - (4). Weight and sufficiency.
- 189. — Trial or hearing.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Instructions.
 - (4). Verdict and findings.

**II. AGREEMENTS CONCERNING
MARRIAGE.(Cont'd)**

- 190. — Judgment.
- 191. — Costs and fees.

**III. CREATION, EXISTENCE, AND VALIDITY
OF MARITAL RELATIONSHIP.**

(A) IN GENERAL; REQUISITES AND ESSENTIALS.

- 201. In general.
- 202. Intent, consent, and agreement in general.
- 203. — In general.
- 204. — Consent of parent, guardian, or other third person.
- 205. Formal or ceremonial marriage.
- 206. — In general.
- 207. — Solemnization or celebration.
- 208. — Customs of particular sects or societies.
- 209. — Authority to perform or officiate.
- 210. — Liabilities of person performing or officiating.
- 211. Informal or nonceremonial marriage.
- 212. — In general.
- 213. — Common-law marriage in general.
- 214. — De facto marriage in general.
- 215. — Intent and consent; agreement of parties.
 - (1). In general.
 - (2). Present or future.
- 216. — Declaration, acknowledgment, or avowal.
- 217. — Cohabitation, reputation, or holding out.

Civil unions, domestic partnerships, and similar alternatives to marriage, see IX.
- 218. Proxy marriage.
- 219. Modified, limited, or trial marriage.
- 220. Covenant marriage.
- 221. Persons who may marry.
- 222. — In general.
- 223. — Age.
- 224. — Physical capacity.
- 225. — Mental capacity.
- 226. — Race or color.
- 227. — Sex or gender; same-sex marriage.
 - (1). In general.
 - (2). Transsexual or transgender persons.

253. MARRIAGE AND COHABITATION

III. CREATION, EXISTENCE, AND VALIDITY OF MARITAL RELATIONSHIP.(Cont'd)

228. — Civil status or condition.
Inmates and prisoners, see also PRISONS ¶113.
Convicts, see also CONVICTS ¶21, 22. *Aliens, see also ALIENS, IMMIGRATION, AND CITIZENSHIP.*
Divorced persons, see also DIVORCE ¶1363.
229. — Consanguinity or affinity.
230. — Prior existing marriage; bigamy and polygamy.
Offense of bigamy or polygamy, see VII(D).
231. Notice or publication of bans.
232. Licenses and licensing officers.
233. — In general.
234. — Necessity of license.
235. — Requisites and validity of license.
236. — Authority to issue license.
237. — Duties of officers in general.
238. — Liability of officers and bondsmen in general.
239. — Actions against officers or bondsmen.
240. Certificate.
241. Return, record, and registration.
242. Confidential marriage.
243. Consummation.
244. Fraud or misrepresentation.
Marriage fraud under immigration laws, see ALIENS, IMMIGRATION, AND CITIZENSHIP ¶238, 264, 428, 784.
245. Duress or coercion.

(B) VALIDITY AND EFFECT OF FOREIGN MARRIAGE.

251. In general.
252. Informal or nonceremonial foreign marriage in general.
253. Marriage under tribal laws or customs.
254. Marriage under laws of foreign country.
255. — In general.
256. — Informal or nonceremonial marriage.
257. Same-sex or other nontraditional marriage.
258. — In general.
259. — Marriage under laws of foreign country.

(C) EFFECT OF IMPROPER MARRIAGE; VOID OR VOIDABLE MARRIAGE.

261. In general.
262. Particular defects, effect of.
263. — In general.
264. — Age.

III. CREATION, EXISTENCE, AND VALIDITY OF MARITAL RELATIONSHIP.(Cont'd)

265. — Physical or mental capacity.
266. — Race or color.
267. — Sex or gender; same-sex marriage.
268. — Civil status or condition.
269. — Consanguinity or affinity.
270. — Prior existing marriage; bigamy and polygamy.
Offense of bigamy or polygamy, see VII(D).
271. — Formal requirements.
(1). In general.
(2). Licenses, certificates, recording, and registration.
272. — Consummation.
273. — Fraud or misrepresentation.
Marriage fraud under immigration laws, see ALIENS, IMMIGRATION, AND CITIZENSHIP ¶238, 264, 428, 784.
274. — Duress or coercion.
275. Effect of ignorance or good faith; putative marriage.
276. Informal or nonceremonial marriage, effect of defects in.
277. Foreign marriage, effect of defects in.
278. Curative statutes.
279. Waiver and estoppel.
280. Ratification.

(D) DURATION AND TERMINATION OF MARRIAGE IN GENERAL.

Divorce, see DIVORCE.

291. In general.
292. Separation in general.
293. Abandonment.
294. Imprisonment or involuntary absence.

(E) ACTIONS AND PROCEEDINGS IN GENERAL.

Proceedings to challenge validity of or annul marriage, see III(F).

300. In general.
301. Persons entitled to sue; standing.
302. Time to sue; limitations and laches.
303. Jurisdiction and venue.
304. Process or notice.
305. Parties.
306. Pleading.
307. Trial or hearing.
308. Judgment or decree.

(F) ANNULMENT AND ANNULMENT PROCEEDINGS.

Proceedings for confirmation of disputed marriage, see III(E).

311. In general.

253. MARRIAGE AND COHABITATION

III. CREATION, EXISTENCE, AND VALIDITY OF MARITAL RELATIONSHIP.(Cont'd)

- 312. Nature and form of remedy.
- 313. Grounds.
- 314. — In general.
- 315. — Age.
- 316. — Physical capacity.
- 317. — Mental capacity.
- 318. — Prior existing marriage; bigamy and polygamy.
Offense of bigamy or polygamy, see VII(D).
- 319. — Consummation.
- 320. — Mistake.
- 321. — Fraud or misrepresentation.
Marriage fraud under immigration laws, see ALIENS, IMMIGRATION, AND CITIZENSHIP ¶238, 264, 428, 784.
- 322. — Duress or coercion.
- 323. Defenses.
- 324. Proceedings.
- 325. — In general.
- 326. — Persons entitled to sue; standing.
- 327. — Time to sue; limitations and laches.
- 328. — Jurisdiction and venue.
- 329. — Process or notice.
- 330. — Parties.
- 331. — Pleading.
- 332. — Trial or hearing.
- 333. Scope and extent of relief.
- 334. — In general.
- 335. — Alimony and allowances.
- 336. — Restitution or other disposition of property, and compensation.
- 337. Judgment or decree.
- 338. Operation and effect.
- 339. Review.
- 340. Costs and fees.

(G) EVIDENCE.

Evidence in prosecutions for marriage-related offenses, see also ¶1145, 1164, 1175.

- 351. In general.
- 352. Presumptions and inferences.
- 353. — In general.
- 354. — Presumption of validity in general.
- 355. — Presumptions from records or lack of records.
- 356. — Presumptions from acts, declarations, and admissions of parties.

III. CREATION, EXISTENCE, AND VALIDITY OF MARITAL RELATIONSHIP.(Cont'd)

- 357. — Presumptions as to informal or nonceremonial marriages.
 - (1). In general.
 - (2). Presumptions from cohabitation, reputation, or holding out.
- 358. — Presumptions as to second marriage during lifetime of prior spouse in general.
- 359. — Presumptions as to death of or divorce from prior spouse.
- 360. — Presumptions as to foreign marriages.
- 361. — Presumptions as to continuance of relation.
- 362. — Conflicting presumptions.
- 363. — Rebuttal of presumptions.
- 364. Burden of proof.
- 365. — In general.
- 366. — Informal or nonceremonial marriages.
- 367. — Foreign marriages.
- 368. Admissibility of evidence.
- 369. — In general.
- 370. — Testimony of parties.
- 371. — Witnesses and others present at marriage.
- 372. — Certificates.
- 373. — Records and other entries.
- 374. — Admissions, declarations, and affidavits.
- 375. — Cohabitation, reputation, and holding out.
- 376. — Foreign marriages.
- 377. Degree of proof.
- 378. — In general.
- 379. — Informal or nonceremonial marriages.
- 380. — Foreign marriages.
- 381. Weight and sufficiency of evidence.
- 382. — In general.
- 383. — Testimony of parties or witnesses.
- 384. — Certificate.
- 385. — Admissions, declarations, and affidavits.
- 386. — Informal or nonceremonial marriages.
 - (1). In general.

253. MARRIAGE AND COHABITATION

III. CREATION, EXISTENCE, AND VALIDITY OF MARITAL RELATIONSHIP.(Cont'd)

(2). Cohabitation, reputation, or holding out.

387. — Foreign marriages.

(H) QUESTIONS OF LAW OR FACT.

391. In general.

392. Informal or nonceremonial marriages.

393. Foreign marriages.

(I) INSTRUCTIONS.

395. In general.

396. Informal or nonceremonial marriages.

397. Foreign marriages.

IV. MARITAL RIGHTS, DUTIES, AND LIABILITIES IN GENERAL.

(A) IN GENERAL.

401. In general.

402. Fiduciary or confidential relationship.

403. Domicile and cohabitation.

404. Restraint, discipline, and punishment.

405. Support of spouse and family.

Enforcement of support obligation, see VIII. Child support, see CHILD SUPPORT.

406. — In general.

407. — Commencement, duration, and termination of duty.

408. — Parties' needs, means, and abilities to provide.

409. Services of spouse.

Earnings of spouse, see ¶434.

410. Disabilities and privileges of coverture.

411. — In general.

412. — Trade or business.

413. Evidence.

414. Questions of law or fact.

(B) PROPERTY IN GENERAL.

Community property, see V.

1. IN GENERAL.

421. In general.

422. Right or capacity to take and hold property.

423. Transfers of property to spouses in general.

424. Nature and extent of spouses' ownership interests in general.

425. — In general.

IV. MARITAL RIGHTS, DUTIES, AND LIABILITIES IN GENERAL.(Cont'd)

426. — Separate or joint ownership in general.

427. — Vested or inchoate interests in general.

428. Particular property or circumstances of acquisition.

429. — In general.

430. — Real property in general.

431. — Personal property in general.

432. — Appurtenances and improvements.

433. — Money, profits, and proceeds in general.

434. — Earnings and distributions.

435. — Insurance and benefits.

436. — Gifts, trusts, and inheritance.

437. — Accounts and deposits.

438. — Rights of action, judgments, and damages.

439. — Property acquired before marriage.

440. Estoppel to claim separate property or estate.

441. Evidence.

442. — In general; admissibility.

443. — Presumptions, inferences, and burden of proof.

444. — Degree of proof.

445. — Weight and sufficiency.

446. Questions of law or fact.

2. JOINT TENANCY.

451. In general; nature and incidents.

452. Creation and existence in general.

453. Particular property or circumstances of acquisition.

454. Survivorship.

455. Severance and termination.

456. Evidence.

457. Questions of law or fact.

3. TENANCY IN COMMON.

461. In general; nature and incidents.

462. Creation and existence in general.

463. Particular property or circumstances of acquisition.

464. Survivorship.

465. Tenancy in common and joint tenancy distinguished.

466. Severance and termination.

253. MARRIAGE AND COHABITATION

IV. MARITAL RIGHTS, DUTIES, AND LIABILITIES IN GENERAL.(Cont'd)

- 467. Evidence.
- 468. Questions of law or fact.

4. TENANCY BY ENTIRETY.

- 471. In general; nature and incidents.
- 472. Creation and existence in general.
- 473. Particular property or circumstances of acquisition.
- 474. — In general.
- 475. — Real property in general.
- 476. — Personal property in general.
- 477. — Appurtenances and improvements.
- 478. — Money, profits, and proceeds in general.
- 479. — Earnings and distributions.
- 480. — Insurance and benefits.
- 481. — Gifts, trusts, and inheritance.
- 482. — Accounts and deposits.
- 483. — Rights of action, judgments, and damages.
- 484. — Property acquired before marriage.
- 485. Survivorship.
- 486. Tenancy by entirety and joint tenancy distinguished.
- 487. Tenancy by entirety and tenancy in common distinguished.
- 488. Severance and termination.
- 489. Evidence.
- 490. — In general; admissibility.
- 491. — Presumptions, inferences, and burden of proof.
- 492. — Degree of proof.
- 493. — Weight and sufficiency.
- 494. Questions of law or fact.

5. RIGHTS, DUTIES, AND LIABILITIES OF SPOUSES AS TO PROPERTY.

Property transactions by spouses, see IV(F). Property transactions between spouses, see IV(H).

- 501. In general.
- 502. Consent in general.
- 503. Management and use of property.
- 504. Adverse possession.
- 505. Separate property or estate.
- 506. Evidence.
- 507. Questions of law or fact.

(C) CONTRACTS IN GENERAL.

- 511. In general.

IV. MARITAL RIGHTS, DUTIES, AND LIABILITIES IN GENERAL.(Cont'd)

- 512. Right or capacity to contract.
- 513. Requisites and validity of contracts in general.
- 514. Particular contracts.
- 515. — In general.
Contracts for sale or other disposition of property, see IV(F). Contracts between spouses, see IV(H).
- 516. — Contracts made individually.
- 517. — Contracts made jointly.
- 518. — Contracts for services.
- 519. — Contracts preceding marriage.
Agreements to marry, see II(B). Premarital contracts between spouses, see II(C).
- 520. — Releases.
- 521. Ratification and avoidance.
- 522. Separate property or estate, contracts concerning or enforceable against.
- 523. Evidence.
- 524. Questions of law or fact.

(D) DEBTS, EXPENSES, AND RIGHTS OF CREDITORS IN GENERAL.

- 531. In general.
- 532. Right or capacity to incur debts and expenses.
- 533. Individual debts and expenses.
- 534. Joint debts and expenses.
- 535. Judgment debts; rights of judgment creditors.
- 536. — In general.
- 537. — Enforcement against entireties property.
- 538. Loans and advances.
- 539. Commercial paper and negotiable instruments.
- 540. — In general.
- 541. — Indorsement for transfer.
- 542. — Joinder and consent.
- 543. — Note for spouse's debt.
- 544. Guaranty or suretyship.
- 545. — In general.
- 546. — Guaranty in general.
- 547. — Surety for spouse.
- 548. — Surety for third person.
- 549. — Indorsement of note as surety.
- 550. — Accommodation note or acceptance.
- 551. Enforcement against separate property or estate.

253. MARRIAGE AND COHABITATION

IV. MARITAL RIGHTS, DUTIES, AND LIABILITIES IN GENERAL.(Cont'd)

- 552. — In general.
- 553. — Effect of possession, use, or management by nonowning spouse.
- 554. — Improvements and materials furnished.
- 555. — Judgment debts; right of judgment creditors.
- 556. — Loans and advances.
- 557. — Commercial paper and negotiable instruments.
- 558. — Guaranty and suretyship.
 - (1). In general.
 - (2). Debts of nonowning spouse.
- 559. — Debts incurred in separate business.
- 560. — Debts contracted on credit of separate estate.
- 561. — Debts expressly charged on separate estate.
 - (1). In general.
 - (2). Debts of nonowning spouse.
- 562. Premarital debts and expenses.
- 563. Evidence.
- 564. Questions of law or fact.

(E) NECESSARIES AND FAMILY EXPENSES.

- 571. In general.
- 572. Right or capacity to procure necessities.
- 573. Joint, primary, and secondary liability.
- 574. Viability of marriage.
- 575. — In general.
- 576. — Effect of separation.
 - (1). In general.
 - (2). Separation for fault.
 - (3). Separation by agreement.
- 577. — Effect of pendency of divorce.
- 578. Effect of charging or extending credit to procuring spouse alone.
- 579. Effect of agreement by nonprocuring spouse to pay.
- 580. Notice not to sell to procuring spouse on credit.
- 581. Particular expenses.
- 582. — In general.
- 583. — Medical services.
- 584. — Last sickness and funeral expenses.
- 585. — Costs of administration of estate of deceased spouse.

IV. MARITAL RIGHTS, DUTIES, AND LIABILITIES IN GENERAL.(Cont'd)

- 586. — Counsel fees.
- 587. Enforcement against separate property or estate.
- 588. Evidence.
- 589. Questions of law or fact.

(F) PROPERTY TRANSACTIONS BY SPOUSES.

Acquisition and ownership of property by spouses, and incidents thereof, see IV(B). Property transactions between spouses, see IV(H).

- 591. In general.
- 592. Right or capacity to engage in property transactions.
- 593. Requisites and validity in general.
- 594. — In general.
- 595. — Joinder and consent in general.
- 596. — Deeds in general.
- 597. Accounts and deposits in general.
- 598. Purchases, sales, and conveyances.
- 599. Leases.
- 600. Encumbrances and liens.
- 601. Mortgages and deeds of trust.
- 602. — In general.
- 603. — Purchase money transactions.
- 604. Secured transactions, chattel mortgages, and pledges.
- 605. Easements.
- 606. Gifts and trusts.
- 607. Transactions involving separate property or estate.
- 608. — In general.
- 609. — Mortgages, deeds of trust, and pledges.
- 610. Transactions preceding marriage.
- 611. Transactions in fraud of spouse.
See also FRAUDULENT CONVEYANCES ¶103.
- 612. Other particular transactions.
- 613. Ratification and avoidance.
- 614. Evidence.
- 615. Questions of law or fact.

(G) AGENCY.

- 621. In general.
- 622. Right or capacity to appoint or act as agent.
- 623. Agency between spouses.
- 624. — In general.
- 625. — Apparent authority in general.
- 626. — Particular cases and contexts.

253. MARRIAGE AND COHABITATION

IV. MARITAL RIGHTS, DUTIES, AND LIABILITIES IN GENERAL.(Cont'd)

- (1). In general.
- (2). Contracts in general.
- (3). Debts and expenses.
- (4). Property transactions.
- (5). Separate property or estate.
- 627. — Ratification or repudiation of agency.
- 628. Evidence.
- 629. — In general; admissibility.
- 630. — Presumptions, inferences, and burden of proof.
- 631. — Degree of proof.
- 632. — Weight and sufficiency.
- 633. Questions of law or fact.

(H) TRANSACTIONS BETWEEN SPOUSES.

- 641. In general.
- 642. Contracts and agreements in general.
- 643. — In general.
- 644. — Right or capacity to make contract or agreement with spouse.
- 645. — Requisites and validity.
- 646. — Construction, operation, performance, and breach.
- 647. Contracts and debts existing at time of marriage.
- 648. Services.
- 649. Partnership or other joint enterprise.
- 650. Loans and advances.
- 651. Commercial paper and negotiable instruments.
- 652. Transactions in personal property.
- 653. Transmutation of character of property.
- 654. Conveyances.
- 655. — In general.
- 656. — Validity in general.
- 657. — Third person as intermediary.
- 658. — Consideration.
- 659. — Rights and interests acquired.
- 660. — Mortgage or security.
- 661. Gifts.
- 662. — In general.
- 663. — Power to make or receive.
- 664. — Third person as intermediary.
- 665. — What constitutes.
 - (1). In general.
 - (2). Accounts and deposits.

IV. MARITAL RIGHTS, DUTIES, AND LIABILITIES IN GENERAL.(Cont'd)

- 666. — Validity.
- 667. — Operation and effect.
- 668. Agreements concerning terms of marital relationship.
- 669. — In general.
- 670. — Reconciliation agreements.
- 671. Compromise, settlement, and release.
- 672. Modification, rescission, or avoidance.
- 673. Property settlements.
Prenuptial settlements and other premarital agreements, see II(C).
- 674. — In general.
- 675. — Requisites and formation.
- 676. — Validity and enforceability.
- 677. — Construction, operation, performance, and breach.
 - (1). In general.
 - (2). Particular cases and contexts.
- 678. — Modification, rescission, or avoidance.
- 679. Evidence.
- 680. — In general; admissibility.
- 681. — Presumptions, inferences, and burden of proof.
 - (1). In general.
 - (2). Gifts.
 - (3). Property settlements.
- 682. — Degree of proof.
- 683. — Weight and sufficiency.
 - (1). In general.
 - (2). Gifts.
 - (3). Property settlements.
- 684. Questions of law or fact.

(I) RIGHTS OF ACTION AND DEFENSES.

- 691. In general.
- 692. Capacity to sue and be sued in general.
- 693. Rights of action by spouses.
- 694. — In general.
- 695. — Actions on contracts.
- 696. — Actions concerning separate property.
- 697. — Other particular actions.
Tort actions, see VI.
- 698. — Defenses against spouses.
- 699. Rights of action against spouses.
- 700. — In general.
- 701. — Actions on contracts.

253. MARRIAGE AND COHABITATION

IV. MARITAL RIGHTS, DUTIES, AND LIABILITIES IN GENERAL.(Cont'd)

- 702. — Actions concerning separate property.
- 703. — Other particular actions.
Tort actions, see VI.
- 704. — Defenses by spouses.
- 705. Rights of action between spouses.
- 706. — In general.
- 707. — Interspousal immunity in general.
- 708. — Actions on contracts.
- 709. — Actions concerning separate property.
- 710. — Other particular actions.
Tort actions, see VI.

(J) PROCEEDINGS.

- 721. In general.
- 722. Jurisdiction and venue.
- 723. Time to sue; limitations and laches.
- 724. Parties.
- 725. — In general.
- 726. — Joinder and intervention in actions against spouses.
- 727. Abatement and revival.
- 728. Process.
- 729. Pleading.
- 730. — In general.
- 731. — Actions by spouses.
- 732. — Actions against spouses.
- 733. — Actions between spouses.
- 734. — Answer or other responsive pleading.
- 735. — Variance between pleadings and proof.
- 736. Trial or hearing.
- 737. — In general.
- 738. — Instructions.
- 739. — Verdict and findings.
- 740. Judgment.
- 741. — In general.
- 742. — Against spouses jointly or individually.
- 743. — Against separate property.
- 744. Costs and fees.

V. COMMUNITY PROPERTY.

(A) IN GENERAL.

- 751. In general.
- 752. Nature of marital community.

V. COMMUNITY PROPERTY.(Cont'd)

- 753. Creation, existence, and validity of marital community.
- 754. Duration and termination of marital community.
- 755. — In general.
- 756. — Abandonment, separation, or divorce.
- 757. — Death.
- 758. — Physical or mental incapacity.
- 759. — Election or other act of parties.
- 760. Evidence.
- 761. Questions of law or fact.

(B) PROPERTY SUBJECT TO COMMUNITY; CHARACTERIZATION.

1. IN GENERAL.

- 771. In general.
- 772. Property acquired or held during marriage in general.
- 773. Time when character determined; continuance of character.
- 774. Division and valuation of property or interests.
- 775. — In general.
- 776. — Discretion of court in general.
- 777. — Factors considered; methodologies used.
- 778. — Time of assessment or measure.
- 779. — Credits, offsets, and deductions.
- 780. — Payment.

2. PARTICULAR PROPERTY.

- 791. In general.
- 792. Real property in general.
- 793. Personal property in general.
- 794. Appurtenances and improvements.
- 795. Licenses, education, and degrees.
- 796. Businesses and associated assets in general.
- 797. Stocks, bonds, and other investments.
- 798. Good will.
- 799. Money, profits, and proceeds in general.
- 800. Interests under leases; rents.
- 801. Earnings and distributions.
- 802. Tax refunds and overpayments.
- 803. Insurance and benefits.
- 804. — In general.
- 805. — Life insurance.

253. MARRIAGE AND COHABITATION

V. COMMUNITY PROPERTY.(Cont'd)

- 806. — Pensions, retirement benefits, and annuities.
- 807. — Stock options.
- 808. — Disability benefits and workers' compensation.
- 809. Accounts and deposits.
- 810. Rights of action, judgments, and damages.

3. PARTICULAR CIRCUMSTANCES OF ACQUISITION OR POSSESSION.

- 821. In general.
- 822. Purchases.
- 823. — In general.
- 824. — Property acquired on credit.
- 825. — Use of separate property as consideration or security for purchase.
- 826. — Necessity and effect of recitals in conveyances.
- 827. Gifts, trusts, and inheritance.
- 828. Public lands acquired by grant or entry.
- 829. Property acquired before marriage.
- 830. Property acquired after termination of community.
- 831. Names in which property is acquired or held.
- 832. Change in form or character of property; commingling.
- 833. — In general.
- 834. — Particular cases.
- 835. Property derived from separate property.
- 836. — In general.
- 837. — Improvements or additions to separate property.
- 838. — Rents, profits, and products of separate property.
- 839. — Appreciation of separate property.
- 840. — Proceeds of separate property.
- 841. Waiver and estoppel as to character of property.
- 842. Waiver and estoppel as to division and valuation of property or interests.

4. EVIDENCE.

- 851. In general; admissibility.
- 852. Presumptions and inferences.
- 853. — In general.
- 854. — Property acquired or held during marriage in general.

V. COMMUNITY PROPERTY.(Cont'd)

- 855. — Division and valuation of property or interests in general.
- 856. — Particular property in general.
- 857. — Particular circumstances of acquisition or possession in general.
- 858. — Purchases.
- 859. — Gifts, trusts, and inheritance.
- 860. — Property acquired before marriage.
- 861. — Property acquired after termination of community.
- 862. — Names in which property is acquired or held.
- 863. — Change in form or character of property; commingling.
- 864. — Property derived from separate property.
- 865. Burden of proof.
- 866. Degree of proof.
- 867. Weight and sufficiency.
- 868. — In general.
- 869. — Property acquired or held during marriage in general.
- 870. — Division and valuation of property or interests in general.
- 871. — Particular property in general.
- 872. — Particular circumstances of acquisition or possession in general.
- 873. — Purchases.
- 874. — Gifts, trusts, and inheritance.
- 875. — Property acquired before marriage.
- 876. — Property acquired after termination of community.
- 877. — Names in which property is acquired or held.
- 878. — Change in form or character of property; commingling.
- 879. — Property derived from separate property.

5. QUESTIONS OF LAW OR FACT.

- 881. In general.
- 882. Division and valuation of property or interests.

(C) RIGHTS, DUTIES, AND LIABILITIES OF SPOUSES AS TO PROPERTY.

Property transactions by spouses, see V(E). Property transactions between spouses, see V(F).

- 891. In general.
- 892. Management and use of property.

253. MARRIAGE AND COHABITATION

V. COMMUNITY PROPERTY.(Cont'd)

- 893. Adverse possession.
- 894. Separate property or estate.
- 895. Fiduciary duties.
- 896. Rights, duties, and liabilities after termination of community.
- 897. Evidence.
- 898. Questions of law or fact.

(D) DEBTS, EXPENSES, AND RIGHTS OF CREDITORS.

Tort liability, see VI.

- 901. In general.
- 902. Individual debts and expenses.
- 903. Necessaries and family expenses.
- 904. Taxes and assessments.
- 905. Insurance.
- 906. Loans and advances.
- 907. Commercial paper and negotiable instruments.
- 908. Guaranty or suretyship.
- 909. Debts and expenses concerning separate property or estate.
- 910. Premarital debts and expenses.
- 911. Debts and expenses incurred after termination of community.
- 912. Evidence.
- 913. — In general; admissibility.
- 914. — Presumptions, inferences, and burden of proof.
- 915. — Degree of proof.
- 916. — Weight and sufficiency.
- 917. Questions of law or fact.

(E) PROPERTY TRANSACTIONS BY SPOUSES.

Acquisition and ownership of property by spouses, and incidents thereof, see V(B), V(C). Property transactions between spouses, see V(F).

- 921. In general.
- 922. Sales and conveyances.
- 923. Leases.
- 924. Encumbrances and liens.
- 925. Mortgages and deeds of trust.
- 926. — In general.
- 927. — Purchase money transactions.
- 928. Secured transactions, chattel mortgages, and pledges.
- 929. Easements.
- 930. Gifts and trusts.
- 931. Transactions involving separate property or estate.

V. COMMUNITY PROPERTY.(Cont'd)

- 932. Transactions preceding marriage.
- 933. Transactions after termination of community.
- 934. Transactions in fraud of spouse.
See also FRAUDULENT CONVEYANCES ¶103.
- 935. Other particular transactions.
- 936. Estoppel to assert invalidity.
- 937. Evidence.
- 938. — In general; admissibility.
- 939. — Presumptions, inferences, and burden of proof.
- 940. — Degree of proof.
- 941. — Weight and sufficiency.
- 942. Questions of law or fact.

(F) TRANSACTIONS BETWEEN SPOUSES.

- 951. In general.
- 952. Contracts and agreements in general.
- 953. — In general.
- 954. — Requisites and validity.
- 955. — Construction, operation, performance, and breach.
- 956. Transmutation of character of property.
- 957. — In general.
- 958. — Transmutation into community property.
- 959. — Transmutation into separate property.
- 960. Gifts.
- 961. — In general.
- 962. — Transmutation by gift.
- 963. Agreements modifying or terminating marital community.
- 964. Agreements as to division and valuation of property or interests.
- 965. Compromise, settlement, and release.
- 966. Evidence.
- 967. — In general; admissibility.
- 968. — Presumptions, inferences, and burden of proof.
- 969. — Degree of proof.
- 970. — Weight and sufficiency.
- 971. Questions of law or fact.

(G) REIMBURSEMENT RIGHTS BETWEEN SPOUSES.

- 981. In general.
- 982. For contributions to community property.

253. MARRIAGE AND COHABITATION

V. COMMUNITY PROPERTY.(Cont'd)

- 983. — In general.
- 984. — After termination of community.
- 985. For diminution of community property.
- 986. For contributions to or diminution of separate property.
- 987. For payment of debts and expenses.
- 988. Evidence.
- 989. — In general; admissibility.
- 990. — Presumptions, inferences, and burden of proof.
- 991. — Degree of proof.
- 992. — Weight and sufficiency.
- 993. Questions of law or fact.

(H) RIGHTS OF ACTION AND DEFENSES.

Tort actions, see VI.

- 1001. In general.
- 1002. Rights of action by spouses.
- 1003. Rights of action against spouses.
- 1004. Rights of action between spouses.
- 1005. — In general.
- 1006. — Actions for dissolution or partition.

(I) PROCEEDINGS.

- 1011. In general.
- 1012. Jurisdiction and venue.
- 1013. Time to sue; limitations and laches.
- 1014. Parties.
- 1015. Process and appearance.
- 1016. Pleading.
- 1017. Trial or hearing.
- 1018. Judgment or decree.
- 1019. — In general.
- 1020. — Execution and enforcement.
- 1021. Accounting.
- 1022. Review.
- 1023. — In general.
- 1024. — Decisions reviewable.
- 1025. — Presentation and reservation in lower court of grounds of review.
- 1026. — Scope, extent, and standard of review.
- 1027. — Presumptions on review.
- 1028. — Harmless and reversible error.
- 1029. — Determination and disposition.
- 1030. Costs and fees.

(J) DESCENT AND DISTRIBUTION.

- 1041. In general.
- 1042. Rights and liabilities of survivor.
- 1043. — In general.
- 1044. — Possession or use of community property.
- 1045. — Acceptance or renunciation of community.
- 1046. — Debts and charges against community.
- 1047. — Debts incurred after death of spouse.
- 1048. — Rights of creditors of survivor.
- 1049. — Sales and conveyances.
 - (1). In general.
 - (2). For payment of community debts.
 - (3). Rights and liabilities of purchasers.
- 1050. — Mortgage or pledge of community property.
- 1051. — Proceedings.
- 1052. Rights and liabilities of heirs.

Persons adopted, see ADOPTION. Nonmarital children, see DESCENT AND DISTRIBUTION II(C).
- 1053. — In general.
- 1054. — Acceptance or renunciation of rights.
- 1055. — Community debts and charges.
- 1056. — Proceedings.
- 1057. Subsequent marriage of survivor.
- 1058. Administration.
- 1059. — In general.
- 1060. — Qualifying as survivor.
- 1061. — What are community assets.
- 1062. — Control, management, and collection.
- 1063. — Allowance of claims.
- 1064. — Sale or lease of community property.
- 1065. — Accounting and settlement.
- 1066. — Distribution of property.
- 1067. — Proceedings.

VI. TORTS.

(A) IN GENERAL.

- 1071. In general.
- 1072. Torts against spouses.
- 1073. — In general.
- 1074. — Persons entitled to sue or recover.

253. MARRIAGE AND COHABITATION

VI. TORTS.(Cont'd)

- 1075. — Derivative claims in general.
- 1076. — Loss of spouse's services, society, or consortium.
 - (1). In general.
 - (2). Nature of underlying claim or injury.
 - (3). Relation to and viability of underlying claim.
- 1077. — Medical and other expenses.
- 1078. Torts by spouses.
- 1079. — In general.
- 1080. — Torts committed before marriage.
- 1081. — Liability of one spouse for other spouse's conduct.
- 1082. — Liability of marital community.
- 1083. Torts between spouses.
- 1084. — In general.
- 1085. — Particular cases and contexts.
- 1086. — Rights of action; interspousal immunity.
 - (1). In general.
 - (2). Particular cases and contexts.
- 1087. Proceedings on tort claims.
- 1088. — In general.
- 1089. — Jurisdiction and venue.
- 1090. — Time to sue; limitations and laches.
- 1091. — Parties.
 - (1). In general.
 - (2). Joinder and intervention in actions against spouses.
- 1092. — Abatement and revival.
- 1093. — Process.
- 1094. — Pleading.
 - (1). In general.
 - (2). Actions by spouses.
 - (3). Actions against spouses.
 - (4). Actions between spouses.
 - (5). Answer or other responsive pleading.
 - (6). Variance between pleadings and proof.
- 1095. — Evidence.
 - (1). In general; admissibility.
 - (2). Presumptions, inferences, and burden of proof.
 - (3). Degree of proof.
 - (4). Weight and sufficiency.

VI. TORTS.(Cont'd)

- 1096. — Trial.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Instructions.
 - (4). Verdict and findings.
 - 1097. — Judgment.
 - (1). In general.
 - (2). Against spouses jointly or individually.
 - (3). Against separate property.
 - 1098. — Costs and fees.
- (B) ALIENATION OF AFFECTIONS.**
- 1101. In general.
 - 1102. Right of action; effect of statute.
 - 1103. Defenses.
 - 1104. Persons liable.
 - 1105. Time to sue; limitations and laches.
 - 1106. Parties.
 - 1107. Pleading.
 - 1108. Evidence.
 - 1109. — In general.
 - 1110. — Presumptions, inferences, and burden of proof.
 - 1111. — Admissibility.
 - (1). In general.
 - (2). Declarations or admissions of spouse.
 - (3). Declarations or admissions of third persons.
 - (4). Acts or conduct of spouse.
 - (5). Acts or conduct of third persons.
 - (6). Financial condition or earning capacity.
 - (7). Mitigation of damages.
 - 1112. — Weight and sufficiency.
 - 1113. Damages.
 - 1114. — In general.
 - 1115. — Punitive or exemplary damages.
 - 1116. Trial and judgment.
- (C) ADULTEROUS CONDUCT; CRIMINAL CONVERSATION.**
- Offense of adultery, see VII(B).*
- 1121. In general.
 - 1122. Right of action; effect of statute.
 - 1123. Defenses.
 - 1124. Pleading.
 - 1125. Evidence.

253. MARRIAGE AND COHABITATION

VI. TORTS.(Cont'd)

- 1126. Damages.
- 1127. — In general.
- 1128. — Punitive or exemplary damages.
- 1129. Trial and judgment.

VII. OFFENSES.

(A) IN GENERAL.

- 1131. In general.
- 1132. Performing or participating in illegal marriage.
- 1133. Offenses between spouses in general.
- 1134. Spousal liability for offenses committed by other spouse.

(B) ADULTERY.

Civil liability for adultery, including tort of criminal conversation, see VI(C).

- 1141. In general; nature and elements.
- 1142. Defenses.
- 1143. Persons entitled to prosecute.
- 1144. Indictment, information, presentment, or complaint.
- 1145. Evidence.
- 1146. — In general.
- 1147. — Presumptions, inferences, and burden of proof.
- 1148. — Admissibility in general.
- 1149. — Marriage.
- 1150. — Intimacy and intercourse.
- 1151. — Weight and sufficiency.
- 1152. Trial.
- 1153. Sentence and punishment.

(C) COHABITATION.

Civil unions, domestic partnerships, and similar alternatives to marriage, see IX.

- 1161. In general; nature and elements.
- 1162. Defenses.
- 1163. Indictment, information, presentment, or complaint.
- 1164. Evidence.
- 1165. Trial.
- 1166. Sentence and punishment.

(D) BIGAMY AND POLYGAMY.

Validity of bigamous or polygamous marriage, see §230, 270. Annulment of bigamous or polygamous marriage, see §318.

- 1171. In general; nature and elements.
- 1172. Bigamous cohabitation in general.

VII. OFFENSES.(Cont'd)

- 1173. Defenses.
- 1174. Indictment, information, presentment, or complaint.
- 1175. Evidence.
- 1176. — In general.
- 1177. — Presumptions, inferences, and burden of proof.
- 1178. — Admissibility in general.
- 1179. — Previous marriage.
- 1180. — Illegal marriage or cohabitation.
- 1181. — Weight and sufficiency.
- 1182. Trial.
- 1183. Sentence and punishment.

VIII. ENFORCEMENT OF SUPPORT OBLIGATION.

Duty to support, see §405. Enforcement in divorce proceedings, see DIVORCE V. Enforcement of child support obligation, see CHILD SUPPORT. Recoupment of public assistance benefits, see also PUBLIC ASSISTANCE.

- 1201. In general.
- 1202. Offenses in general.
- 1203. Separate maintenance, support orders, and alimony in general.
- 1204. — In general.
- 1205. — Relation to divorce and judicial separation.
- 1206. — Persons entitled to sue or seek award.
- 1207. Abandonment or desertion.
- 1208. Cruelty, mistreatment, or insobriety.
- 1209. Constructive abandonment.
- 1210. Conduct of requesting spouse; relative fault.
- 1211. Consent and condonation.
- 1212. Resumption of cohabitation; reconciliation.
- 1213. Parties' needs, means, and abilities to pay.
- 1214. Amount and incidents of award.
- 1215. — In general.
- 1216. — Particular awards.
- 1217. — Periodic payments or lump sum.
- 1218. — Bond or other security.
- 1219. — Receivers.
- 1220. — Disposition of property.
- 1221. Proceedings.
- 1222. — In general.
- 1223. — Nature and form of proceedings.

253. MARRIAGE AND COHABITATION

VIII. ENFORCEMENT OF SUPPORT OBLIGATION.(Cont'd)

- 1224. — Conditions precedent.
- 1225. — Jurisdiction and venue.
- 1226. — Time for proceedings; limitations and laches.
- 1227. — Parties.
- 1228. — Process.
- 1229. — Pleading.
- 1230. — Indictment or information.
- 1231. — Evidence.
 - (1). In general; admissibility.
 - (2). Presumptions, inferences, and burden of proof.
 - (3). Degree of proof.
 - (4). Weight and sufficiency.
- 1232. — Trial or hearing.
- 1233. — Judgment or order.
 - (1). In general.
 - (2). Construction, operation, and effect; conclusiveness.
- 1234. Amendment or modification of award.
- 1235. Duration and termination of award.
- 1236. Enforcement of award.
- 1237. — In general.
- 1238. — Lien and priority.
- 1239. — Contempt.
- 1240. Interjurisdictional enforcement issues.
- 1241. Sentence and punishment.
- 1242. Costs and fees in general.
- 1243. Temporary support and counsel fees; award pending proceedings.
- 1244. — In general.
- 1245. — Amount and incidents of award.
- 1246. Review of proceedings.
- 1247. — In general.
- 1248. — Decisions reviewable.
- 1249. — Presentation and reservation in lower court of grounds of review.
- 1250. — Scope, extent, and standard of review.
 - (1). In general.
 - (2). Discretion of lower court.
 - (3). Questions of fact, verdicts, and findings.
- 1251. — Presumptions on review.
- 1252. — Harmless and reversible error.
- 1253. — Determination and disposition.

IX. MARRIAGE ALTERNATIVES.

Right to marry or cohabit in general, see ¶102. Informal or nonceremonial marriage, see ¶211. Offenses, see VII.

- 1261. In general.
- 1262. Same-sex relationships in general.
- 1263. Rights, duties, and liabilities of parties to relationship.
- 1264. — In general.
- 1265. — Property in general.
- 1266. — Torts.
- 1267. Contracts and contractual relationships.
- 1268. — In general.
- 1269. — Same-sex relationships.
- 1270. Duration and termination of relationship.
- 1271. — In general.
- 1272. — Support, allowances, and disposition of property; palimony.
 - (1). In general.
 - (2). Agreements and promises.
- 1273. Actions and proceedings.
- 1274. — In general.
- 1275. — Pleading.
- 1276. — Evidence.
- 1277. — Review.
- 1278. — Costs and fees.

256. MAYHEM

SUBJECTS INCLUDED

- Infliction of personal injuries which deprive one of any member or organ of his body or cause other permanent disability or disfigurement
- Attempts to maim, and assaults with intent to maim
- Nature and extent of criminal responsibility therefor, and grounds of defense
- Prosecution and punishment of such acts as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Aggravated assaults, wounding, etc., without maiming or attempting to maim, see ASSAULT AND BATTERY

257. MECHANICS' LIENS

1. Nature and elements of offenses.
2. Defenses.
3. Persons liable.
4. Indictment and information.
5. Evidence.
6. Trial.
7. Sentence and punishment.

257. MECHANICS' LIENS

SUBJECTS INCLUDED

Statutory liens on specific real property as security for the price or value of work performed or materials furnished for the erection, improvement, or repair of buildings or other structures on the property

Nature and grounds of such liens

What property may be subjected to such liens

By whom and for what purposes property may be subjected thereto

Who may be entitled to the benefit of such liens

Proceedings to acquire and perfect such liens

Waiver, discharge, or extinguishment thereof

Bonds, etc., to secure against such liens

Priorities of such liens

Enforcement of mechanics' liens

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Liens in general, and particularly liens on personal property, see LIENS

Vessels, liens for construction or repairs, see MARITIME LIENS

Wages in general, liens for, see LABOR AND EMPLOYMENT

Work or materials other than for building, liens on real property for, see IMPROVEMENTS, MINES AND MINERALS, RAILROADS

I. NATURE, GROUNDS, AND SUBJECT-MATTER IN GENERAL, ¶1-21.

II. RIGHT TO LIEN, ¶22-115.

II. RIGHT TO LIEN—Cont'd

- (A) NATURE OF IMPROVEMENT, ¶22-34.
 - (B) SERVICES RENDERED AND MATERIALS FURNISHED, ¶35-54.
 - (C) AGREEMENT OR CONSENT OF OWNER, ¶55-78.
 - (D) PERSONS ENTITLED IN GENERAL, ¶79-93.
 - (E) SUBCONTRACTORS, AND CONTRACTORS' WORKERS AND MATERIALMEN, ¶94-115.
- III. PROCEEDINGS TO PERFECT, ¶116-160.
 - IV. OPERATION AND EFFECT, ¶161-201.
 - (A) AMOUNT AND EXTENT OF LIEN, ¶161-179.
 - (B) PROPERTY, ESTATES, AND RIGHTS AFFECTED, ¶180-193.
 - (C) PRIORITY, ¶194-201.
 - V. ASSIGNMENT OF LIEN OR CLAIM, ¶202-206.
 - VI. WAIVER OF RIGHT TO LIEN, ¶207-217.
 - VII. BOND OR DEPOSIT TO PREVENT OR DISCHARGE LIEN, ¶218-229.
 - VIII. EXTINGUISHMENT, ¶230-235.
 - IX. RELEASE, ¶236.
 - X. PAYMENT OR SATISFACTION, ¶237-244.
 - XI. ENFORCEMENT, ¶245-311.
 - XII. INDEMNITY AGAINST LIENS, ¶312-317.

I. NATURE, GROUNDS, AND SUBJECT-MATTER IN GENERAL.

1. Nature of lien in general.
2. What law governs.
3. Constitutional and statutory provisions.
5. Construction of lien laws in general.
6. Retroactive operation of lien laws.
7. Effect of change or repeal of lien laws.
8. Persons who may obtain lien.
9. Property which may be subject to lien.
10. — In general.
12. — Corporate property.
13. — Public buildings and other property.
14. — Homestead and other exemptions.
15. Estates or interest which may be subject to lien.
16. — In general.
17. — Particular legal estates in land.
18. — Equitable estates and interests in general.

257. MECHANICS' LIENS

I. NATURE, GROUNDS, AND SUBJECT-MATTER IN GENERAL.(Cont'd)

- 19. — Mortgaged or incumbered property.
- 20. — Leaseholds.
- 21. — Trust estates.

II. RIGHT TO LIEN.

(A) NATURE OF IMPROVEMENT.

- 22. Nature of property improved.
- 23. Annexation or benefit to real property.
- 24. Nature of building or other structure.
- 25. Erection or construction.
- 26. Improvement, alteration, or repair of building.
- 27. Removal of building.
- 28. Excavations and foundations.
- 29. Particular portions of building or structure.
- 30. Fixtures in general.
- 31. Apparatus for heating, cooking, water supply, or lighting.
- 32. Machinery.
- 33. Improvements outside building.
 - (1). In general.
 - (2). Digging wells.
 - (3). Grading and cultivating.
- 34. Improvements of streets or sidewalks.

(B) SERVICES RENDERED AND MATERIALS FURNISHED.

- 35. Nature of services in general.
- 36. Architects, and preparation of plans and specifications.
- 38. Superintendence.
- 39. Services of workers in general.
- 40. Preparatory work.
- 42. Work other than construction.
- 43. Work not done on premises.
- 44. Board or lodging of workers.
- 45. Nature of materials in general.
- 47. Materials used, but not incorporated in work.
- 48. Materials prepared or furnished, but not used.
- 49. Defective materials.
- 50. Transportation.
- 51. Advances of money.
- 52. Services or materials for particular building or work.

II. RIGHT TO LIEN.(Cont'd)

- 53. Reliance on credit of building or property.
- 54. Requisite amount or value.

(C) AGREEMENT OR CONSENT OF OWNER.

- 55. Element of lien in general.
 - (1). In general.
 - (2). Extra work.
 - (3). Consequential damages.
- 56. Ownership or possession of land.
- 57. — In general.
 - (1). In general.
 - (2). Part of joint owners.
 - (3). Persons holding title in trust for equitable owner.
 - (4). Acquisition of title after making of contract.
 - (5). Occupants or persons in possession or control of land.
 - (6). Vendor under executory contract.
- 58. — Lessee or other tenant.
- 59. — Purchaser under executory contract.
- 60. Necessity for contract or consent by owner.
- 61. — In general.
- 62. — Improvements on homestead.
- 63. — Improvements by lessee.
- 64. — Improvements by purchaser.
- 65. Capacity to contract or consent.
- 66. — In general.
- 67. — Infants.
- 68. — Married women.
- 69. Authority to contract or consent.
- 70. — In general.
- 71. — Husband or wife.
- 72. — Agent or other representative.
- 73. Form and requisites of contract or consent.
 - (.5). In general.
 - (1). Contract or consent in general.
 - (2). Contracts and consents relative to homesteads and married women's property.
 - (3). Necessity of writing.
 - (4). Description of property, work, or material.
 - (5). Stipulations as to time of performance and payment.

257. MECHANICS' LIENS

II. RIGHT TO LIEN.(Cont'd)

- (6). Signature and acknowledgment.
- (7). Consent to improvements by lessee.
- (8). Contracts including nonlienable elements.
- (9). Legality of lienor's object in making contract with owner.
- 74. Filing or recording contract, consent, or notice.
- 75. Implied contract or consent.
 - (1). In general.
 - (2). Improvements by lessees, and vendors or purchasers under executory contracts.
 - (3). Improvements on married women's separate property.
 - (4). What constitutes knowledge.
- 76. Estoppel.
- 77. Ratification.
- 78. Notice or protest by owner to prevent lien.

(D) PERSONS ENTITLED IN GENERAL.

- 79. Workers in general.
- 80. Mechanics and artisans.
- 81. Laborers and other unskilled workers.
- 82. Materialmen.
- 83. — In general.
- 84. — Effect of contract with owner.
- 85. Contractors.
- 86. — In general.
- 87. — Contracts for part of work.
- 88. — Services of workers.
- 89. — Materials.
- 90. — Stipulations of contracts as to lien.
- 91. — Modification of contract.
- 92. — Rescission or abandonment of contract.
- 93. — Performance of contract.

(E) SUBCONTRACTORS, AND CONTRACTORS' WORKERS AND MATERIALMEN.

- 94. Grounds and requisites of lien in general.
- 95. Direct lien independent of lien of principal contractor.
- 96. Agency of principal contractor for owner.
- 97. Substitution in place of and subordination to rights of principal contractor.
- 98. Requisites of subcontracts in general.

II. RIGHT TO LIEN.(Cont'd)

- 99. Notice to owners.
- 99.1. Contract or consent of owner.
- 100. Effect of filing of principal contract by owner.
- 101. Effect of stipulations in principal contract.
- 102. — In general.
- 103. — As to liens.
- 104. — As to payment.
- 105. Rights of subcontractors in general.
- 106. Subcontractors of subcontractor.
- 107. Employees of contractors or subcontractors.
- 108. Persons furnishing materials to contractors or subcontractors.
- 109. Persons furnishing materials to materialmen.
- 110. Modification or rescission of principal contract.
- 111. Default in performance of principal contract.
 - (1). In general.
 - (2). Abandonment after receipt of payment for all work.
 - (3). Stipulations of original contract as to default.
- 112. Performance of subcontract.
- 113. Lien or rights as to money due principal contractor.
 - (1). In general.
 - (2). Notice to owner.
- 114. Assignment by principal contractor.
 - (.5). In general.
 - (1). Form, requisites, and validity of assignment.
 - (2). Operation and effect of assignment.
 - (3). Effect of transfer of contract to contractor's sureties.
- 115. Payment to principal contractor, or to subcontractor employing claimant.
 - (.5). In general.
 - (1). Payments to principal contractor in general.
 - (2). Advances and premature payments.
 - (3). Collusive payments.
 - (4). Notice to or knowledge of owner.

257. MECHANICS' LIENS

II. RIGHT TO LIEN.(Cont'd)

- (5). Payments to subcontractor employing claimant.

III. PROCEEDINGS TO PERFECT.

- 116. Nature and form in general.
- 117. Notice to owner.
- 117.1. — In general.
- 118. — Necessity.
- 119. — Persons who may give notice.
- 120. — Persons to whom notice may be given.
- 121. — Time for notice.
- 122. — Form and requisites.
- 123. — Service.
- 124. — Defects and amendment.
- 125. — Operation and effect.
- 126. — Failure or delay in giving notice.
- 127. Filing contract.
- 128. Necessity for filing claim or statement.
- 129. Filing one or more claims in general.
- 130. Filing one or more claims against different buildings.
 - (1). In general.
 - (2). Buildings or improvements on different lots or parcels.
 - (3). Release of claim as to part of buildings.
- 131. Place for filing claim or statement.
- 132. Time for filing claim or statement.
 - (1). In general.
 - (2). Transfer or incumbrance of property.
 - (3). Maturity of claim or accrual of indebtedness.
 - (4). Completion of contract in general.
 - (5). Necessity for completion.
 - (6). Delay in completion.
 - (7). What amounts to completion.
 - (8). Items operative to renew period.
 - (9). Abandonment of work.
 - (10). Successive deliveries and continuing contracts.
 - (11). Deliveries under separate contracts.
 - (12). Claims for extras and claimants without special contracts.
 - (13). Contractors and materialmen under contract with owner.

III. PROCEEDINGS TO PERFECT.(Cont'd)

- (14). Subcontractors and materialmen under contract not with owner.
- (15). Amendment of claim after limitations have run.
- 133. Form and contents of claim or statement.
- 134. — In general.
- 135. — Designation of parties.
- 136. — Description of property.
 - (.5). In general.
 - (1). Necessity in general.
 - (2). Sufficiency in general.
 - (3). Necessity of designating particular portion of entire tract.
 - (4). Error in name of subdivision.
 - (5). Description of building.
 - (6). Lien on improvement separate from land.
- 137. — Ownership or possession of property.
 - (.5). In general.
 - (1). Necessity of owner's name or estate in general.
 - (2). Sufficiency in general.
 - (3). Husband and wife.
 - (4). Property held under executory contracts of sale.
 - (5). Property of lessors and lessees.
 - (6). Transfer of property.
- 138. — Description of improvement.
- 139. — Description of services or materials.
 - (.5). In general.
 - (1). Necessity in general.
 - (2). Averments as to use or furnishing for use in building.
 - (3). Sufficiency.
- 140. — Statement as to agreement or consent of owner.
- 141. — Designation of employer or contractor.
- 142. — Statement as to terms of contract.
- 143. — Setting out or annexing contract.
- 144. — Statement as to performance of contract.
- 145. — Statement as to extra work or materials.
- 146. — Statement as to time of rendering services or furnishing materials.

257. MECHANICS' LIENS

III. PROCEEDINGS TO PERFECT.(Cont'd)

- 147. — Statement as to amount due or to become due.
- 148. — Statement as to credits and offsets.
- 149. — Itemized statement or account.
 - (.5). In general.
 - (1). Necessity in general.
 - (2). Where contract is for gross sum.
 - (3). Sufficiency in general.
 - (4). Apportionment between buildings or portions of work.
- 150. — Promissory note as evidence.
- 151. — Statement as to notice to owner.
- 152. — Statement as to time of filing.
- 153. Signature of claim or statement.
- 154. Verification of claim or statement.
 - (.5). In general.
 - (1). Necessity.
 - (2). Sufficiency in general.
 - (3). Averments on knowledge or information and belief.
 - (4). Persons entitled to verify.
 - (5). Persons entitled to administer oath.
 - (6). Jurat.
- 155. Mode and sufficiency of filing or record of claim or statement.
- 156. Notice of filing or service of copy of claim or statement.
- 157. Effect of errors or defects in claim or statement.
 - (1). In general.
 - (2). Errors in dates.
 - (3). Excessive claims.
 - (4). Claims for items unfurnished or unused.
 - (5). Inclusion of nonlienable items.
 - (6). Omission of credits.
 - (7). Waiver of defects.
- 158. Amendment of, or new, claim or statement.
- 159. Effect of filing claim or statement.
- 160. Cancellation or striking off of claim or lien.

IV. OPERATION AND EFFECT.

(A) AMOUNT AND EXTENT OF LIEN.

- 161. Amount secured in general.
 - (1). In general.

IV. OPERATION AND EFFECT.(Cont'd)

- (2). Part performance.
 - (3). Limitation to market or reasonable value of labor or materials.
 - (4). Interest and costs.
 - 162. Limitation to amount payable under contract.
 - 163. — In general.
 - 164. — Subcontractors, and contractors' workers and materialmen.
 - (1). In general.
 - (2). Validity of contract.
 - (3). Fraud between owner and contractor in inception of contract.
 - (4). Claims of contractor for extras.
 - 165. Time of accrual or commencement.
 - 166. — In general.
 - 167. — Making or filing of contract.
 - 168. — Beginning of work.
 - 169. — Interruption of work.
 - 170. — Delivery of materials.
 - 172. — Filing of claim or statement.
 - 173. — Relation back.
 - 174. Duration.
 - 175. — In general.
 - 176. — Effect of proceedings for enforcement.
 - 177. Continuance or revival.
 - 178. — In general.
 - 179. — Proceedings.
- (B) PROPERTY, ESTATES, AND RIGHTS AFFECTED.**
- 180. Nature of property affected.
 - 181. Extent of land affected.
 - 182. — In general.
 - 183. — Separate lots or buildings.
 - 184. Buildings.
 - 185. Fixtures.
 - 186. Appurtenances.
 - 187. Estate, right, or interest affected in general.
 - 188. Estate or interest of person creating or consenting to lien.
 - 189. — In general.
 - 190. — Equitable estate or interest.
 - 191. — Leasehold.
 - 192. Lien on reversion of landlord for improvements by tenant.

257. MECHANICS' LIENS

IV. OPERATION AND EFFECT.(Cont'd)

193. Lien on interest of vendor for improvements by purchaser.

(C) PRIORITY.

194. Mechanics' liens on same property.
195. — In general.
196. — Classification and order of preference.
197. Conveyances in general.
198. Liens and incumbrances in general.
199. Vendors' liens.
200. Judgments.
201. Attachments and executions.

V. ASSIGNMENT OF LIEN OR CLAIM.

202. Assignability in general.
203. Form and requisites of assignment.
 (1). In general.
 (2). Change in personnel of contracting firm.
204. Effect of assignment of debt or claim.
205. Operation and effect of assignment of lien.
206. Rights and liabilities of parties.

VI. WAIVER OF RIGHT TO LIEN.

207. Agreements not to claim lien.
208. Express waiver.
209. Implied waiver in general.
210. Extension of time for payment.
211. Taking or transfer of bill or note.
 (1). In general.
 (2). Intention of parties as to note being absolute payment.
 (3). Time of maturity of note.
 (4). Transfer of bill or note by payee.
 (5). Taking by subcontractor of note of contractor.
212. Taking collateral security.
 (1). In general.
 (2). Retention of title as security for purchase price.
 (3). Note or indorsement of third person.
213. Taking mortgage on same property.
214. Recovery of judgment for debt.
215. Levy of attachment or execution.
216. Estoppel to claim lien.

VI. WAIVER OF RIGHT TO LIEN.(Cont'd)

- (1). In general.
(2). As against mortgagees.
(3). Statements and conduct of subcontractors.
217. Persons entitled to assert waiver.

VII. BOND OR DEPOSIT TO PREVENT OR DISCHARGE LIEN.

218. Liens which may be prevented or discharged by giving security.
219. Substitution of security.
220. Persons entitled to give security.
220.1. — In general.
221. — Owners.
222. — Contractors.
223. Form and requisites of bond.
224. Sufficiency of bond.
225. Deposit as security.
226. Operation and effect of bond or deposit.
227. Liabilities on bonds.
228. Actions on bonds.
229. Liabilities of owner for failure to take bond for protection of subcontractors.

VIII. EXTINGUISHMENT.

230. Extinguishment or loss in general.
231. Destruction of building.
232. Removal of building.
233. Transfer of title in general.
234. Merger.
235. Delay in assertion or enforcement of lien.

IX. RELEASE.

236. In general.

X. PAYMENT OR SATISFACTION.

237. Payment of debt.
237.1. — In general.
238. — Requisites and sufficiency.
239. — Part payment and application of payments.
240. Payment to subcontractors or contractors' workers or materialmen.
241. Satisfaction other than payment.
242. Entry of satisfaction of record.
243. Effect of release or satisfaction.

257. MECHANICS' LIENS

X. PAYMENT OR SATISFACTION.(Cont'd)

244. Rights of third persons making payment or satisfaction.

XI. ENFORCEMENT.

245. Nature and form of remedy in general.

- (1). In general.
- (2). Legal or equitable.
- (3). Personal or in rem.

246. Exclusiveness of statutory remedy.

247. Removal of improvements from premises.

249. Conditions precedent.

250. Compelling enforcement.

251. Restraining enforcement.

252. Joinder of liens in same proceeding.

253. Defenses in general.

254. Set-off and counterclaim.

- (1). In general.
- (2). Damages for default in performance of contract.

255. Persons entitled to enforce.

256. Persons entitled to contest in general.

257. Contest by contractors of liens of subcontractors, workmen, and materialmen.

258. Jurisdiction.

259. Venue.

260. Time to sue, limitations, and laches.

See also LIMITATION OF ACTIONS.

- (1). In general.
- (2). When suit may be brought.
- (3). When period begins to run.
- (4). Commencement of suit.
- (5). Necessity of obtaining judgment within statutory period.
- (6). Effect of delay beyond statutory period.

261. Parties.

- 261.1. — In general.

262. — Plaintiffs.

- (1). In general.
- (2). Assignment of contract or lien.

263. — Defendants.

- (.5). In general.
- (1). Proper and necessary parties in general.
- (2). Husband and wife.
- (3). Owners in general.

XI. ENFORCEMENT.(Cont'd)

- (4). Transfer of title.
- (5). Death of owner.
- (6). Lienors and incumbrancers in general.
- (7). Mortgagees and bondholders.
- (8). Other persons claiming or entitled to mechanic's lien.
- (9). Contractor or other person employing claimant.
- (10). Effect of dismissal or failure to join proper parties.

264. — Addition or substitution.

- 264.1. Intervention.

265. Process in general.

266. Attachment.

267. Writ of scire facias.

268. Notice of pendency of action.

269. Pleading.

- 269.1. — In general.

271. — Declaration, bill, complaint, or petition.

- (.5). In general.

- (1). Form, requisites, and sufficiency in general.
- (2). Showing as to purpose of suit and relief demanded.
- (3). Description of property.
- (4). Averments as to ownership or possession of property and persons interested therein.
- (5). Description of improvement.
- (6). Description of services or materials and purposes of furnishings.
- (7). Averments as to agreement or consent of owner.
- (8). Averments as to terms of contract.
- (9). Averments as to time of furnishing work or materials.
- (10). Averments as to completion of work or performance of contract.
- (11). Averments as to amount due or to become due to plaintiff.
- (12). Averments as to owner's indebtedness to contractor employing plaintiff.
- (13). Itemized statement or account, or bill of particulars.
- (14). Averments as to notice to owner.

257. MECHANICS' LIENS

XI. ENFORCEMENT.(Cont'd)

- (15). Averments as to claim or statement and filing thereof.
- (16). Averments as to notice of lis pendens.
- (17). Anticipation of defenses.
- (18). Joinder of counts or claims.
- (19). Verification.
- 272. — Plea, answer, or affidavit of defense.
- 273. — Cross-bill or cross-complaint, and answer thereto.
- 274. — Replication or reply.
- 275. — Demurrer or exception.
- 276. — Amendment.
 - (.5). In general.
 - (1). Right to amend in general.
 - (2). Amendments allowed.
 - (3). Right to answer or plead to amended pleading.
- 277. — Issues, proof, and variance.
 - (.5). In general.
 - (1). Issues in general.
 - (2). Matters to be proved.
 - (3). Evidence admissible under pleadings.
 - (4). Defenses raised by plea.
 - (5). Variance between pleading and claim or statement.
 - (6). Variance between pleading and proof.
- 278. Evidence.
- 278.1. — In general.
- 279. — Presumptions and burden of proof.
- 280. — Admissibility.
 - (1). In general.
 - (2). Quality, quantity, and value of work or materials.
 - (3). Contract and making thereof.
 - (4). State of accounts between owner and contractor employing plaintiff.
 - (5). Book accounts and explanations thereof.
 - (6). Lien claim or statement and record thereof.
- 281. — Weight and sufficiency.
 - (1). In general.
 - (2). Time of commencement and completion of work.

XI. ENFORCEMENT.(Cont'd)

- (3). Agreement or consent of owner and terms thereof.
- (4). Indebtedness of defendant and amount thereof.
- (5). Notice or claim of lien.
- 282. Injunction.
- 283. Receiver.
- 284. Dismissal before hearing.
- 285. Reference.
- 286. Trial or hearing.
- 287. — In general.
- 288. — Questions for jury.
 - (1). In general.
 - (2). Agreement or consent of owner and terms thereof.
 - (3). Commencement and completion of work.
 - (4). Character of building or work.
 - (5). Description of property.
- 289. — Instructions.
- 290. — Verdict and findings.
 - (.5). In general.
 - (1). Necessity.
 - (2). Form, requisites, and sufficiency in general.
 - (3). Responsiveness to issues.
 - (4). Construction and interpretation.
 - (5). Contradictory findings.
 - (6). Indefiniteness.
- 291. Judgment or decree.
 - (.5). In general.
 - (1). Rendition, form, and requisites in general.
 - (2). Judgment by default.
 - (3). Sufficiency in general.
 - (4). Description and extent of land.
 - (5). Conformity to process, pleadings, proofs, and verdict or findings.
 - (6). Directions as to sale or lease, and priorities and distribution of proceeds.
 - (7). Operation and effect.
 - (8). Amendment.
- 292. Execution and enforcement of judgment in general.
- 293. Sale.
- 294. — In general.

257A. MENTAL HEALTH

XI. ENFORCEMENT. (Cont'd)

- 295. — Mortgaged or otherwise incumbered property.
- 296. — Manner, conduct, and validity.
- 297. — Confirming, vacating, or setting aside.
- 298. — Title and rights of purchaser.
- 299. — Redemption.
- 300. — Conveyance to purchaser.
- 301. Deficiency and personal liability.
- 301.1. — In general.
- 302. — Liability for deficiency.
- 303. — Personal liability on failure to establish lien.
 - (1). In general.
 - (2). Liability as affected by existence or loss of lien.
 - (3). Liability of owner in suit by subcontractor.
- 304. — Personal judgment against owner.
 - (1). In general.
 - (2). Persons acquiring title subsequent to lien.
 - (3). Privity of contract between owner and claimant.
 - (4). Validity of original contract.
- 305. — Personal judgment against contractor.
- 307. — Actions to enforce personal liability.
- 308. Proceeds and surplus.
- 309. Review.
- 310. Fees and costs.
 - (1). In general.
 - (2). Allowance dependent on establishment of lien.
 - (3). Items and amount allowable.
 - (4). Persons and property liable.

XII. INDEMNITY AGAINST LIENS.

- 312. Indemnity by contractor to owner in general.
- 313. Contractors' bonds.
- 314. Estoppel of sureties to claim lien.
- 315. Liabilities on bonds.
- 317. Actions on bonds.

257A. MENTAL HEALTH

SUBJECTS INCLUDED

Promotion of mental health
 Care and treatment of persons affected by mental disorder of any kind not merely temporary in nature
 Custody and protection of such persons and their property
 Rights and disabilities of mentally disordered persons in general
 Legal proceedings affecting such persons

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Charitable and reformatory institutions, see ASYLUMS AND ASSISTED LIVING FACILITIES, HEALTH, INFANTS, PRISONS
 Chemical dependents, see CHEMICAL DEPENDENTS
 Civil liabilities arising out of patient care, failure to protect patient from injury, and failure to protect third party from acts of patient, see HEALTH
 Criminal prosecutions, insanity at the time of commission of an offense as a defense, see CRIMINAL LAW
 Limitation statute, effect of disability on running of, see LIMITATION OF ACTIONS
 Mental condition as a factor in sentencing generally, see also SENTENCING AND PUNISHMENT
 Temporary mental disability and mental disability respecting particular transactions, see CONTRACTS, DEEDS, and other specific topics
 Testamentary capacity, see WILLS
 Witnesses, competency as, see WITNESSES

- I. IN GENERAL, ¶1–30.
- II. CARE AND SUPPORT OF MENTALLY DISORDERED PERSONS, ¶31–100.
 - (A) CUSTODY AND CURE, ¶31–70.
 - (B) SUPPORT, ¶71–100.
- III. GUARDIANSHIP AND PROPERTY OF ESTATE, ¶101–330.
 - (A) GUARDIANSHIP IN GENERAL, ¶101–210.

257A. MENTAL HEALTH

III. GUARDIANSHIP AND PROPERTY OF ESTATE—Cont'd

(B) PROPERTY AND MANAGEMENT OF MENTALLY DISORDERED PERSON'S ESTATE, ¶211-290.

(C) ACCOUNTING AND SETTLEMENT, ¶291-330.

IV. DISABILITIES AND PRIVILEGES OF MENTALLY DISORDERED PERSONS, ¶331-470.

(A) IN GENERAL, ¶331-350.

(B) CAPACITY TO TAKE AND HOLD PROPERTY, ¶351-370.

(C) CONTRACTS AND TRANSFERS OF PROPERTY, ¶371-410.

(D) TORTS, ¶411-430.

(E) CRIMES, ¶431-470.

V. ACTIONS, ¶471-518.

I. IN GENERAL.

1. Promotion of mental health in general.
2. Constitutional and statutory provisions.
3. Who are mentally ill or mentally deficient.
 - 3.1. — In general.
4. — Tests and symptoms of mental disorder.
5. — Kinds and degrees of mental illness or deficiency.
6. Determination of mental disorder in general.
7. Burden of proof.
8. Admissibility of evidence.
 - 8.1. — In general.
9. — Competency with regard to time.
10. Weight and sufficiency of evidence.
 - 10.1. — In general.
11. — Degree of proof.
12. — Nature of evidence.
13. Questions of law and fact.
14. Conclusiveness and effect of determination.
 - 14.1. — In general.
15. — Determination of mental health.
16. — Determination of mental disorder in general.
17. — Mental disorder prior to determination.
18. — Mental disorder subsequent to determination.
19. Restoration to mental health, conclusiveness and effect.

I. IN GENERAL.(Cont'd)

20. Mental health officers, departments, and agencies.
21. Records and confidential communications.

II. CARE AND SUPPORT OF MENTALLY DISORDERED PERSONS.

(A) CUSTODY AND CURE.

31. Control and custody in general.
32. Constitutional and statutory provisions.
33. Jurisdiction and venue.
34. Powers of guardian.
35. Removal from jurisdiction.
36. Persons subject to control or treatment.
37. Admission or commitment procedure.
 - 37.1. — In general.
38. — Parties and application.
39. — Process and notice.
40. — Apprehension and custody pending determination.
 - 40.1. — Examination.
 - 40.2. — Guardian ad litem.
 - 40.3. — Counsel.
 - (1). In general.
 - (2). Right to counsel; waiver, withdrawal, and substitution.
 - (3). Effectiveness.
 - 40.4. — Hearing and determination in general.
 - 40.5. — Advice and warnings.
 - 40.6. — Evidence.
 - (1). In general.
 - (2). Judicial notice.
 - (3). Admissibility in general.
 - (4). Presumptions and burden of proof.
 - (5). Experts.
 - (6). — In general; admissibility.
 - (7). — Necessity.
 - (8). — Qualification.
 - (9). Weight and sufficiency.
 - (10). — In general.
 - (11). — Standard of proof in general.
 - (12). — Particular cases.
 - 40.7. — Confrontation of witnesses.
 42. — Time of hearing and presence of respondent.

257A. MENTAL HEALTH

II. CARE AND SUPPORT OF MENTALLY DISORDERED PERSONS. (Cont'd)

- 42.5. — Instructions.
- 43. — Physicians' certificates and other reports.
- 43.5. — Disposition; consideration of alternatives.
- 44. — Order and record.
- 45. — Review.
- 46. — Costs and expenses.
- 47. Conclusiveness and effect of commitment.
- 47.1. — In general.
- 48. — Mental disorder subsequent to commitment.
- 49. Collateral attack.
- 50. Execution of order of commitment; release on bond or security.
- 51. Restraint or treatment.
See also *HEALTH* *§*414 below.
- 51.1. — In general.
- 51.5. — Treatment or medication; training or habilitation.
- 51.10. — Nature or extent of restraint.
- 51.15. — Involuntary treatment or medication.
- 51.20. — Actions and proceedings.
See also *HEALTH* *§*695-703(2).
- 56. Transfer of custody.
- 57. Sterilization.
- 58. Parole.
- 59. Restoration to mental health and discharge.
- 59.1. — In general.
- 60. — Jurisdiction and proceedings.
- 61. — Conclusiveness and effect of discharge.

(B) SUPPORT.

Support of persons in residential facilities, not including mental hospitals and others primarily providing treatment, due to mental impairment or developmental disability, see ASYLUMS AND ASSISTED LIVING FACILITIES.

- 71. Compensation for support in institution.
- 72. Constitutional and statutory provisions.
- 73. Duties and liabilities in general.
- 74. Relatives, liability.
- 74.1. — In general.
- 75. — Parents.
- 76. — Husband.
- 77. Guardian or committee, liability.
- 78. Public authorities, liability.

II. CARE AND SUPPORT OF MENTALLY DISORDERED PERSONS. (Cont'd)

- 78.1. — In general.
- 79. — Counties and towns.
- 80. — Residence or settlement.
- 81. Bonds for support.
- 82. Proceedings to enforce liability for support.
- 82.1. — In general.
- 83. — Jurisdiction and parties.
- 84. — Pleading and evidence.
- 85. — Trial and judgment or order.
- 86. — Execution and enforcement of judgment, and review.

III. GUARDIANSHIP AND PROPERTY OF ESTATE.

(A) GUARDIANSHIP IN GENERAL.

- 101. Nature and grounds.
- 102. Constitutional and statutory provisions.
- 103. Public guardians.
- 104. Persons subject to guardianship.
- 104.1. — In general.
- 105. — Mental incompetency or incapacity in general.
- 106. — Weakness or unsoundness of mind.
- 107. — Old age or infirmity.
- 108. Jurisdiction.
- 108.1. — In general.
- 109. — Particular courts.
- 110. — Residence or situs of property.
- 111. — Acquisition and extent of jurisdiction.
- 112. Venue.
- 113. Appointment in general; family meeting.
- 114. Temporary guardian.
- 115. Appointment for person or estate only.
- 116. Persons who may be appointed.
- 116.1. — In general.
- 117. — Discretion of court.
- 118. — Heirs, next of kin, and relatives in general.
- 119. — Husband or wife.
- 120. Proceedings for appointment in general.
- 121. Nature and form of proceedings.
- 121.1. — In general.
- 122. — Statutory proceedings; compliance with statutes.
- 123. Determination of mental disorder.

257A. MENTAL HEALTH

III. GUARDIANSHIP AND PROPERTY OF ESTATE.(Cont'd)

- 124. Parties.
- 125. Death pending proceedings.
- 126. Application or petition.
- 127. Notice.
- 127.1. — In general.
- 128. — Necessity.
- 129. — Persons entitled to notice.
- 130. — Form and sufficiency.
- 131. — Service and return.
- 132. — Effect of want of, or irregularity of, notice.
- 133. Appearance and representation by attorney; guardian ad litem.
- 134. Injunction and receiver.
- 135. Evidence.
- 136. Dismissal of proceedings.
- 137. Hearing and determination.
- 137.1. — In general.
- 138. — Presence of disordered person.
- 139. — Scope of inquiry and matters considered.
- 140. — Commission.
- 141. — Submission to jury.
- 142. — Personal examination.
- 143. Verdict and findings.
- 144. Confirming or vacating finding; new commission or new trial.
- 145. Traverse of inquisition.
- 146. Order or decree.
- 146.1. — In general.
- 147. — Setting aside or vacating.
- 148. Review.
- 148.1. — In general.
- 149. — Nature and form of remedy and jurisdiction.
- 150. — Decisions reviewable.
- 151. — Right of review; parties.
- 152. — Requisites and proceedings for transfer; effect of appeal.
- 153. — Scope of review in general and trial de novo.
- 154. — Presumptions, and discretion of lower court.
- 155. — Questions of fact, verdicts, and findings.
- 156. — Harmless error.
- 157. — Determination and disposition.
- 158. Costs.

III. GUARDIANSHIP AND PROPERTY OF ESTATE.(Cont'd)

- 158.1. — In general.
- 159. — Attorney fees.
- 160. Conclusiveness and effect of appointment or decision in general.
- 160.1. — In general.
- 161. — On issue of mental disorder.
- 162. — Presumptions.
- 163. Collateral attack.
- 163.1. — In general.
- 164. — Grounds.
- 165. — What constitutes collateral attack.
- 166. Qualification of guardian or committee.
- 167. Duration and termination of guardianship in general.
- 168. Restoration to mental health and discharge.
- 168.1. — In general.
- 169. — Proceedings in general.
- 170. — Parties, pleading, and evidence.
- 171. — Hearing and determination.
- 172. — Review.
- 173. — Conclusiveness and effect.
- 174. Removal of guardian.
- 174.1. — In general.
- 175. — Grounds.
- 176. — Proceedings in general.
- 177. — Review.
- 178. Appointment of successor.
- 179. Authority, duties, and liability of guardians in general.
See also HEALTH ¶¶910-928.
- 180. Compensation of guardian or committee.
- 180.1. — In general.
- 181. — Measure and amount in general.
- 182. — Commissions.
- 183. — Extra allowance.
- 184. — Forfeiture or waiver.
- 185. — Proceedings and order for allowance.
- 186. Lien of guardian for disbursements and compensation.
- 187. Liabilities on guardianship bonds.
- 187.1. — In general.
- 188. — Property, functions, and acts covered.
- 189. — Past defaults and liability as between different sureties.

257A. MENTAL HEALTH

**III. GUARDIANSHIP AND PROPERTY
OF ESTATE.(Cont'd)**

- 190. — Discharge or release.
- 191. — Conclusiveness of adjudication against principal.
- 192. — Actions in general.
- 193. — Parties, pleading, and evidence.
- 194. Foreign and ancillary guardians.
- 194.1. — In general.
- 195. — Appointment.
- 196. — Custody and disposition of property.

**(B) PROPERTY AND MANAGEMENT OF MENTALLY
DISORDERED PERSON'S ESTATE.**

- 211. In general.
- 212. Constitutional and statutory provisions.
- 213. Jurisdiction of courts.
- 213.1. — In general.
- 214. — Particular courts.
- 215. Instructions of court.
- 216. Rights and powers of guardian or committee in general.
- 217. Duties and liabilities of guardian or committee in general.
- 218. Effect of death of ward.
- 219. Inventory and collection of assets.
- 220. Title to property.
- 221. Continuance of business.
- 222. Contracts.
- 222.1. — In general.
- 223. — Services.
- 224. Investments.
- 224.1. — In general.
- 225. — Character of investment.
- 226. — Disposal of nonlegal investments.
- 227. — Guardians of veterans.
- 228. Interest on funds of estate.
- 229. Deposits.
- 230. Loans.
- 231. Expenditures.
- 231.1. — In general.
- 232. — Support and maintenance.
- 233. — Services; litigation expenses.
- 234. — Principal of estate.
- 235. Compromise and settlement, and arbitration.
- 236. Election for ward; exercise of powers; insurance rights.
- 237. Individual interest in transactions.

**III. GUARDIANSHIP AND PROPERTY
OF ESTATE.(Cont'd)**

- 238. Waste, conversion, or embezzlement by guardian; loss of property.
- 239. Liabilities of, and claims against, estate.
- 239.1. — In general.
- 240. — Liabilities of estate in general.
- 241. — Contracts in general; necessities.
- 242. — Support of ward in general.
- 243. — Claims of public authorities for support in general.
- 244. — Support in institution.
- 245. — Amount of recovery for support.
- 246. — Allowances for support of family in general.
- 247. — Husband, wife or children, allowance for support.
- 248. — Collateral kindred and other persons, allowances.
- 249. — Nature of allowances to family; conditions.
- 250. — Services in general.
- 251. — Counsel fees and costs.
- 252. — Evidence.
- 253. — Presentation and allowance of claims in general.
- 254. — Jurisdiction.
- 255. — Limitations and laches.
- 256. — Hearing and determination.
- 257. — Priorities and payment.
- 258. Sales, transfers, and encumbrances by guardian; order of court.
- 258.1. — In general.
- 259. — Authority to sell or convey in general.
- 260. — Necessity of court approval.
- 261. — Purposes of, and grounds for, sale, and objections.
- 262. — Property or interests subject to disposal.
- 263. — Jurisdiction.
- 264. — Proceedings for sale in general.
- 265. — Parties and application.
- 266. — Notice.
- 267. — Hearing, order or decree, and record.
- 268. — Validity of sale.
- 269. — Confirmation.
- 270. — Vacating or setting aside.

257A. MENTAL HEALTH

III. GUARDIANSHIP AND PROPERTY OF ESTATE.(Cont'd)

- 271. — Title, rights, and liabilities of purchasers.
- 272. — Collateral attack.
- 273. — Proceeds.
- 274. — Lease.
- 275. — Mortgage or pledge.

(C) ACCOUNTING AND SETTLEMENT.

- 291. In general.
- 292. Duty to account.
- 293. Persons entitled to accounting, and persons liable to account.
- 294. Jurisdiction of courts.
- 295. Proceedings for accounting.
- 296. Actions for accounting.
- 297. Charges.
- 298. Credits.
- 299. Form and requisites of account.
- 300. Objections and exceptions.
- 301. Evidence.
- 302. Hearing or reference, and determination.
- 303. Order or decree.
- 304. Opening or vacating.
- 305. Review.
- 305.1. — In general.
- 306. — Scope of review and trial de novo.
- 307. — Determination and disposition.
- 308. Costs and expenses.
- 308.1. — In general.
- 309. — Attorney fees.
- 310. Operation and effect.
- 310.1. — In general.
- 311. — Collateral attack.
- 312. — Intermediate accounts.
- 313. Private accounting and settlement.

IV. DISABILITIES AND PRIVILEGES OF MENTALLY DISORDERED PERSONS.

(A) IN GENERAL.

- 331. Disabilities and privileges in general.
- 332. Eligibility for office or public service.
- 333. Capacity to appoint agent or trustee.
- 334. Estoppel to allege mental disability.

(B) CAPACITY TO TAKE AND HOLD PROPERTY.

- 351. In general.
- 352. Adverse possession.

(C) CONTRACTS AND TRANSFERS OF PROPERTY.

- 371. Transactions in general.
- 372. Contracts in general.
- 372.1. — In general.
- 373. — Contracts before adjudication or appointment of guardian.
- 374. — Effect of adjudication, commitment, or guardianship.
- 375. Necessaries.
- 376. Sale, purchase, exchange, or lease.
- 377. Services.
- 378. Loans and advances.
- 379. Bills and notes.
- 380. Compromise, settlement, and release.
- 381. Insurance.
- 382. Conveyances.
- 382.1. — In general.
- 383. — Before adjudication or guardianship.
- 384. — Effect of adjudication, commitment, or guardianship.
- 385. — Bona fide purchasers.
- 386. Assignments and transfers of personal property.
- 387. Mortgages and pledges.
- 388. Gifts.
- 389. Avoidance.
- 389.1. — In general.
- 390. — Restoration of former status.
- 391. — Restoration of consideration or benefit.
- 392. — Persons entitled to avoidance.
- 393. — Persons as to whom transactions may be avoided.
- 394. — Time for avoidance and laches.
- 395. — Operation and effect.
- 396. Ratification.

(D) TORTS.

- 411. Liability of mentally disordered persons in general.
- 412. Particular torts of mentally disordered persons.
- 413. Liability for torts of others.
- 414. Liability of others for torts of mentally disordered persons.
See also HEALTH §753-758.
- 415. Damages.

257A. MENTAL HEALTH

(E) CRIMES.

- 431. Responsibility and apprehension.
- 432. Mental disorder at time of trial.
- 433. Constitutional and statutory provisions.
 - (1). In general.
 - (2). Sex offenders.
- 434. Examination and determination as to mental disorder.
- 435. Commitment for observation or examination.
- 436. Custody and confinement.
- 436.1. — In general.
- 437. — Duration of confinement.
- 438. — Restoration to mental health.
- 439. Confinement after acquittal on ground of mental disorder.
- 439.1. — In general.
- 440. — Discharge from confinement.
- 450. Defective delinquents.
- 451. Support and maintenance.
- 452. Sex offenders.
Special treatment of juveniles, see INFANTS ¶2229, 2674, 3202.
- 453. — In general.
- 454. — Persons and offenses included.
- 455. — Jurisdiction and proceedings in general.
- 456. — Nature of proceeding.
- 457. — Petition and application.
- 458. — Notice.
- 459. — Custody pending proceedings.
- 460. — Evidence.
 - (1). In general.
 - (2). Experts.
- 461. — Examination.
- 462. — Hearing.
- 463. — Counsel or guardian ad litem.
- 464. — Judgment or order.
- 465. — Disposition; commitment.
 - (1). In general.
 - (2). Duration.
 - (3). Treatment.
 - (4). Psychotropic or other medication.
 - (5). Conditional release.
- 466. — Discharge or continued commitment.
- 467. — Appeal.

IV. DISABILITIES AND PRIVILEGES OF MENTALLY DISORDERED PERSONS.(Cont'd)

- 468. — Costs.
- 469. Registration and community notification.
 - (1). In general.
 - (2). Persons and offenses included.
 - (3). Scores and risk levels.
 - (4). Proceedings.
 - (5). Effect of assessment or determination; notice and registration.
 - (6). Appeal.
- 469.5. Offenses and prosecutions.
- 470. Civil liability.

V. ACTIONS.

- 471. In general.
- 472. Capacity to sue and be sued.
- 472.1. — In general.
- 473. — Effect of adjudication or guardianship.
- 474. Statutory provisions.
- 475. Rights of action and defenses.
- 475.1. — In general.
- 476. — Actions by or against guardian.
- 477. Nature of remedy.
- 478. Conditions precedent in general.
- 479. Leave to sue.
- 480. Jurisdiction and venue.
- 481. Parties.
- 481.1. — In general.
- 482. — Use of name of disordered person or guardian.
- 483. — New parties.
- 484. Representation by general guardian or committee.
- 485. Guardian ad litem or next friend.
- 485.1. — In general.
- 486. — Propriety of representation.
- 487. — Authority to appoint.
- 488. — Necessity of appointment.
- 489. — Time for appointment and conditions precedent.
- 490. — Proceedings for appointment.
- 491. — Order and effect of appointment.
- 492. — Eligibility and qualification.
- 493. — Compensation and expenses.
- 494. — Termination of authority and appointment of successor.
- 495. — Powers, duties, and liabilities.
- 496. — Failure to procure appointment.

257A. MENTAL HEALTH

V. ACTIONS.(Cont'd)

- 497. Restoration to mental health pending action.
- 498. Process.
- 498.1. — In general.
- 499. — Persons to be served.
- 500. Appearance and representation by attorney.
- 501. Pleading.
- 501.1. — In general.
- 502. — Complaint, petition or bill.
- 503. — Plea or answer and affidavit of defense.
- 504. — Issues, proof and variance.
- 505. Evidence.
- 505.1. — In general.
- 506. — Presumptions and burden of proof.
- 507. — Admissibility.
- 508. — Weight and sufficiency.
- 509. Trial.
- 509.1. — In general.
- 510. — Questions for jury.
- 511. — Instructions.
- 512. Judgment.
- 512.1. — In general.
- 513. — By consent, confession, or default.
- 514. — Opening or vacating and equitable relief.
- 515. — Collateral attack.
- 516. Execution and enforcement of judgment.
- 517. Review.
- 518. Costs.

258A. MILITARY JUSTICE

SUBJECTS INCLUDED

The system of justice for the government of the armed forces of the United States and persons under their control as determined by decisions of military courts

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Armed forces, law relating to generally and decisions of civilian courts thereon, see ARMED SERVICES

Military government and martial law, see WAR AND NATIONAL EMERGENCY

- I. IN GENERAL, ⌘500-549.
- II. PUNISHABLE OFFENSES AND DEFENSES TO CHARGES, ⌘550-869.
- III. COURTS-MARTIAL, ⌘870-919.
- IV. PRETRIAL PROCEEDINGS, ⌘920-1019.
 - (A) IN GENERAL, ⌘920-949.
 - (B) CHARGES AND SPECIFICATIONS AND ACTION THEREON, ⌘950-979.
 - (C) ARRAIGNMENT AND PLEA, ⌘980-1019.
- V. EVIDENCE AND WITNESSES, ⌘1020-1169.
- VI. TIME FOR TRIAL AND CONTINUANCE, ⌘1170-1209.
- VII. TRIAL, ⌘1210-1299.
- VIII. SENTENCE, ⌘1300-1350.
- IX. RECORD OF TRIAL, ⌘1351-1379.
- X. REVIEW OF COURTS-MARTIAL, ⌘1380-1459.
 - (A) INITIAL ACTION ON RECORD, ⌘1380-1409.
 - (B) FURTHER REVIEW, ⌘1410-1459.
 - 1. IN GENERAL, ⌘1410-1449.
 - 2. APPEALS BY UNITED STATES, ⌘1450-1459.
- XI. EXTRAORDINARY RELIEF, ⌘1460-1479.
- XII. REVIEW BY CIVILIAN COURTS, ⌘1480-1481.

I. IN GENERAL.

- 500. Sources and authority in general.
- 501. Statutes, rules, and regulations in general.
- 502. Code articles.
- 502.1. — In general.
- 503. — Validity.
- 504. — Construction and operation in general.
- 505. — Legislative intent; construing to carry out.
- 506. — Administrative construction.
- 507. Regulations.
- 507.1. — In general.
- 508. — Validity.
- 509. — Construction and operation.
- 510. Rules.
- 511. Rules of decision.

258A. MILITARY JUSTICE

I. IN GENERAL.(Cont'd)

- 511.1. — In general.
- 512. — Stare decisis.
- 513. — Retroactive application.
- 514. Personal jurisdiction.
Subject matter jurisdiction and service connection, see
Ⓒ552, 555, 561 et seq.; Territorial application, see
Ⓒ523; Jurisdiction of Courts-Martial, see Ⓒ893-898.
- 514.1. — In general.
- 515. — Military status of accused in general.
- 516. — After expiration of term of enlistment.
- 517. — Validity of induction or enlistment.
- 518. — Constructive induction or enlistment.
- 519. — Reservists; National Guard personnel.
- 520. — Minors.
- 521. — Sentenced prisoners.
- 522. — Civilians.
- 523. Territorial application.
- 524. Concurrent and exclusive.
- 525. Non-judicial punishment.
- 526. Command influence.
- 527. Application of the Constitution to the military in general.
- 528. Particular provisions, applicability.
Excludes Fourth Amendment, see Ⓒ1047.
- 528.1. — In general.
- 529. — Equal protection.
See also CONSTITUTIONAL LAW Ⓒ3667.
- 530. — Due process.
See also CONSTITUTIONAL LAW Ⓒ4245.
- 531. — Ex post facto laws; Bills of Attainder.
See also, CONSTITUTIONAL LAW Ⓒ1100(6), 2842.
- 532. — Cruel and unusual punishment.
- 533. — First amendment rights, free speech.
- 534. — Self-incrimination.

II. PUNISHABLE OFFENSES AND DEFENSES TO CHARGES.

- 550. Offenses in general.
- 551. Different offenses in same transaction.
- 552. Subject matter jurisdiction and service connection in general.
- 553. Sex offenses in general.
- 554. — In general; nature and elements.

II. PUNISHABLE OFFENSES AND DEFENSES TO CHARGES.(Cont'd)

- 555. — Subject matter jurisdiction; service connection.
- 556. — Pleadings.
- 557. — Evidence.
- 558. — Instructions.
- 559. Rape and carnal knowledge.
- 560. — In general; nature and elements.
- 561. — Subject matter jurisdiction; service connection.
- 562. — Pleadings.
- 563. — Evidence.
- 564. — Instructions.
- 565. Sodomy.
- 566. — In general; nature and elements.
- 567. — Subject matter jurisdiction; service connection.
- 568. — Pleadings.
- 569. — Evidence.
- 570. — Instructions.
- 571. Indecent acts.
- 572. — In general; nature and elements.
- 573. — Subject matter jurisdiction; service connection.
- 574. — Pleadings.
- 575. — Evidence.
- 576. — Instructions.
- 577. Perjury and false statements.
- 578. — In general; nature and elements.
- 579. — Subject matter jurisdiction; service connection.
- 580. — Pleadings.
- 581. — Evidence.
- 582. — Instructions.
- 583. Arson.
- 584. — In general; nature and elements.
- 585. — Subject matter jurisdiction; service connection.
- 586. — Pleadings.
- 587. — Evidence.
- 588. — Instructions.
- 589. Assault, escape, and related offenses in general.
- 590. — In general; nature and elements.
- 591. — Subject matter jurisdiction; service connection.
- 592. — Pleadings.
- 593. — Evidence.

258A. MILITARY JUSTICE

**II. PUNISHABLE OFFENSES AND DEFENSES
TO CHARGES.(Cont'd)**

594. — Instructions.
595. Assault and battery.
596. — In general; nature and elements.
597. — Subject matter jurisdiction; service connection.
598. — Pleadings.
599. — Evidence.
600. — Instructions.
601. Maiming.
602. — In general; nature and elements.
603. — Subject matter jurisdiction; service connection.
604. — Pleadings.
605. — Evidence.
606. — Instructions.
607. Extortion.
608. — In general; nature and elements.
609. — Subject matter jurisdiction; service connection.
610. — Pleadings.
611. — Evidence.
612. — Instructions.
613. Communicating a threat.
614. — In general; nature and elements.
615. — Subject matter jurisdiction; service connection.
616. — Pleadings.
617. — Evidence.
618. — Instructions.
619. Escape.
620. — In general; nature and elements.
621. — Subject matter jurisdiction; service connection.
622. — Pleadings.
623. — Evidence.
624. — Instructions.
625. Resisting apprehension or arrest.
626. — In general; nature and elements.
627. — Subject matter jurisdiction; service connection.
628. — Pleadings.
629. — Evidence.
630. — Instructions.
631. Homicide generally.
632. — In general; nature and elements.
633. — Subject matter jurisdiction; service connection.

**II. PUNISHABLE OFFENSES AND DEFENSES
TO CHARGES.(Cont'd)**

634. — Pleadings.
635. — Evidence.
636. — Instructions.
637. Murder.
638. — In general; nature and elements.
639. — Subject matter jurisdiction; service connection.
640. — Pleadings.
641. — Evidence.
642. — Instructions.
643. Manslaughter.
644. — In general; nature and elements.
645. — Subject matter jurisdiction; service connection.
646. — Pleadings.
647. — Evidence.
648. — Instructions.
649. Negligent homicide.
650. — In general; nature and elements.
651. — Subject matter jurisdiction; service connection.
652. — Pleadings.
653. — Evidence.
654. — Instructions.
655. Desertion, absence, or missing movement in general.
656. — In general; nature and elements.
657. — Subject matter jurisdiction; service connection.
658. — Pleadings.
659. — Evidence.
660. — Instructions.
661. Desertion.
662. — In general; nature and elements.
663. — Subject matter jurisdiction; service connection.
664. — Pleadings.
665. — Evidence.
666. — Instructions.
667. Unauthorized absence.
668. — In general; nature and elements.
669. — Subject matter jurisdiction; service connection.
670. — Pleadings.
671. — Evidence.
672. — Instructions.
673. Missing movement.

258A. MILITARY JUSTICE

II. PUNISHABLE OFFENSES AND DEFENSES
TO CHARGES.(Cont'd)

- 674. — In general; nature and elements.
- 675. — Subject matter jurisdiction; service connection.
- 676. — Pleadings.
- 677. — Evidence.
- 678. — Instructions.
- 679. Failure to obey order or regulation and dereliction of duty in general.
- 680. Failure to obey order or regulation.
- 681. — In general; nature and elements.
- 682. — Subject matter jurisdiction; service connection.
- 683. — Pleadings.
- 684. — Evidence.
- 685. — Instructions.
- 686. — Validity or legality of order.
- 687. Dereliction of duty.
- 688. — In general; nature and elements.
- 689. — Subject matter jurisdiction; service connection.
- 690. — Pleadings.
- 691. — Evidence.
- 692. — Instructions.
- 693. Disrespect toward superior.
- 694. — In general; nature and elements.
- 695. — Subject matter jurisdiction; service connection.
- 696. — Pleadings.
- 697. — Evidence.
- 698. — Instructions.
- 699. Larceny and theft and related offenses in general.
- 700. — In general; nature and elements.
- 701. — Subject matter jurisdiction; service connection.
- 702. — Pleadings.
- 703. — Evidence.
- 704. — Instructions.
- 705. Larceny.
- 706. — In general; nature and elements.
- 707. — Subject matter jurisdiction; service connection.
- 708. — Pleadings.
- 709. — Evidence.
- 710. — Instructions.
- 711. Wrongful appropriation.
- 712. — In general; nature and elements.

II. PUNISHABLE OFFENSES AND DEFENSES
TO CHARGES.(Cont'd)

- 713. — Subject matter jurisdiction; service connection.
- 714. — Pleadings.
- 715. — Evidence.
- 716. — Instructions.
- 717. Robbery.
- 718. — In general; nature and elements.
- 719. — Subject matter jurisdiction; service connection.
- 720. — Pleadings.
- 721. — Evidence.
- 722. — Instructions.
- 723. Burglary and housebreaking.
- 724. — In general; nature and elements.
- 725. — Subject matter jurisdiction; service connection.
- 726. — Pleadings.
- 727. — Evidence.
- 728. — Instructions.
- 729. Receipt of stolen property.
- 730. — In general; nature and elements.
- 731. — Subject matter jurisdiction; service connection.
- 732. — Pleadings.
- 733. — Evidence.
- 734. — Instructions.
- 735. Forgery.
- 736. — In general; nature and elements.
- 737. — Subject matter jurisdiction; service connection.
- 738. — Pleadings.
- 739. — Evidence.
- 740. — Instructions.
- 741. False claims.
- 742. — In general; nature and elements.
- 743. — Subject matter jurisdiction; service connection.
- 744. — Pleadings.
- 745. — Evidence.
- 746. — Instructions.
- 747. Check offenses.
- 748. — In general; nature and elements.
- 749. — Subject matter jurisdiction; service connection.
- 750. — Pleadings.
- 751. — Evidence.
- 752. — Instructions.

258A. MILITARY JUSTICE

**II. PUNISHABLE OFFENSES AND DEFENSES
TO CHARGES.(Cont'd)**

753. General article violations in general.
754. — In general; nature and elements.
755. — Subject matter jurisdiction; service connection.
756. — Pleadings.
757. — Evidence.
758. — Instructions.
759. Disorders and neglect prejudicial to good order and discipline.
760. — In general; nature and elements.
761. — Subject matter jurisdiction; service connection.
762. — Pleadings.
763. — Evidence.
764. — Instructions.
765. Solicitation.
766. — In general; nature and elements.
767. — Subject matter jurisdiction; service connection.
768. — Pleadings.
769. — Evidence.
770. — Instructions.
771. Crimes and offenses not capital.
772. — In general; nature and elements.
773. — Subject matter jurisdiction; service connection.
774. — Pleadings.
775. — Evidence.
776. — Instructions.
777. Conduct unbecoming an officer.
778. — In general; nature and elements.
779. — Subject matter jurisdiction; service connection.
780. — Pleadings.
781. — Evidence.
782. — Instructions.
783. Alcohol or drug offenses.
784. — In general; nature and elements.
785. — Subject matter jurisdiction; service connection.
786. — Pleadings.
787. — Evidence.
788. — Instructions.
789. Miscellaneous offenses.
790. — In general; nature and elements.
791. — Subject matter jurisdiction; service connection.

**II. PUNISHABLE OFFENSES AND DEFENSES
TO CHARGES.(Cont'd)**

792. — Pleadings.
793. — Evidence.
794. — Instructions.
795. Attempts.
796. — In general; nature and elements.
797. — Subject matter jurisdiction; service connection.
798. — Pleadings.
799. — Evidence.
800. — Instructions.
801. Responsibility; persons liable.
801.1. — In general.
802. — Subject matter jurisdiction; service connection.
803. — Pleadings.
804. — Evidence.
805. — Instructions.
806. Aiders, abettors and accomplices.
806.1. — In general.
807. — Subject matter jurisdiction; service connection.
808. — Pleadings.
809. — Evidence.
810. — Instructions.
811. Principals.
811.1. — In general.
812. — Subject matter jurisdiction; service connection.
813. — Pleadings.
814. — Evidence.
815. — Instructions.
816. Accessories before the fact.
816.1. — In general.
817. — Subject matter jurisdiction; service connection.
818. — Pleadings.
819. — Evidence.
820. — Instructions.
821. Accessories after the fact.
821.1. — In general.
822. — Subject matter jurisdiction; service connection.
823. — Pleadings.
824. — Evidence.
825. — Instructions.
826. Conspirators.
826.1. — In general.

258A. MILITARY JUSTICE

II. PUNISHABLE OFFENSES AND DEFENSES TO CHARGES.(Cont'd)

- 827. — Nature and elements of conspiracy.
- 828. — Subject matter jurisdiction; service connection.
- 829. — Pleadings.
- 830. — Evidence.
- 831. — Instructions.
- 832. Defenses in general.
- 833. Evidence in general.
- 834. Burden of proof in general.
- 835. Weight and sufficiency in general.
- 836. Self-defense.
- 837. Ignorance or mistake of fact or law.
- 838. Inability.
- 839. Coercion or duress.
- 840. Accident.
- 841. Obedience to orders.
- 842. Alibi.
- 843. Mental incapacity.
- 843.1. — In general.
- 844. — Capacity to form intent.
- 845. — Intoxication; drug use.
- 846. — Homicide cases.
- 847. Entrapment.
- 847.1. — In general.
- 848. — Drug cases.
- 849. Grant of immunity.
- 850. Limitation of prosecutions.
- 850.1. — In general.
- 851. — Statute of limitations in general.
- 852. — Time of war.
- 853. Former jeopardy.

III. COURTS-MARTIAL.

Excludes trial and defense counsel, see §§1235-1245, and 1253-1262.

- 870. Classification and composition in general.
- 871. Enlisted members.
- 871.1. — In general.
- 872. — Selection.
- 873. — Requests for.
- 874. Trial by military judge alone.
- 874.1. — In general.
- 875. — Requests and proceedings thereon.
- 876. — Withdrawal of requests.
- 877. Convening authority in general.
- 877.1. — In general.
- 878. — As accuser.

III. COURTS-MARTIAL.(Cont'd)

- 879. Convening courts-martial; detailing members.
- 879.1. — In general.
- 880. — Delegation of power.
- 881. Military judges; magistrates.
- 881.1. — In general.
- 882. — Disqualification.
- 883. Reporters and interpreters.
- 884. Disqualification of members.
- 884.1. — In general.
- 885. — Inelastic attitude toward sentence.
- 886. — Prior participation in case or related case.
- 887. — Member as witness.
- 888. Absent and additional members.
- 889. Challenge of members; waiver.
- 889.1. — In general.
- 890. — Voir dire; procedure.
- 891. — Challenges for cause.
- 892. — Peremptory challenges.
- 893. Nature and scope of jurisdiction in general.
Excludes subject matter jurisdiction, see §§552, 555, 561 et seq.; and personal jurisdiction, see §§514-522.
- 894. Contempts.
- 895. Termination of jurisdiction.
- 896. Exclusive and concurrent jurisdiction.
- 897. General, special and summary courts-martial jurisdiction.
- 898. Objections to jurisdiction, determination, and waiver.

IV. PRETRIAL PROCEEDINGS.

(A) IN GENERAL.

- 920. Proceedings in general.
- 921. Pretrial investigation.
- 921.1. — In general.
- 922. — Appointing.
- 923. — Purposes.
- 924. — Production of witnesses and evidence.
- 925. — Disqualification of investigating officer.
- 926. — Right to counsel.
- 927. Pretrial advice.
- 927.1. — In general.
- 928. — Disqualification of staff judge advocate to give.

258A. MILITARY JUSTICE

IV. PRETRIAL PROCEEDINGS.(Cont'd)

- 929. — Contents.
- 930. — Objections to; waiver.
- 931. Disclosure.
- 931.1. — In general.
- 932. — Jencks Act.
- 933. — Discovery.
- 934. — Depositions.
- 935. Arrest or apprehension.
- 935.1. — In general.
- 936. — Probable cause requirement.
- 937. — Investigative stops; frisks.
- 938. Pretrial restraint or confinement.
- 938.1. — In general.
- 939. — Justification.
- 940. — Procedures for review; magistrate.
- 941. — Information as to charge.
- 942. — Remedies.

See also Ⓒ1461.

(B) CHARGES AND SPECIFICATIONS AND ACTION THEREON.

- 950. Charges and specifications in general.
- 951. Preferral of charges.
- 951.1. — In general.
- 952. — Accuser's oath.
- 953. Sufficiency of allegations.
- 953.1. — In general.
- 954. — Jurisdictional allegations.
- 955. — Time; date; location.
- 956. — Identity of accused and victim.
- 957. Joinder.
- 958. — In general.
- 959. — Multiplicity.
- 960. — Inconsistency.
- 961. Amendment.
- 963. Variance.
- 964. Surplusage.
- 965. Lesser included offenses.
- 965.1. — In general.
- 966. — Particular offenses.
- 967. Referral for trial.
- 967.1. — In general.
- 968. — Withdrawal and re-referral.
- 969. Presentation of unprovable charges.
- 970. Service of charges.
- 971. Objections and waiver.

(C) ARRAIGNMENT AND PLEA.

- 980. Arraignment and plea in general.
- 981. Guilty plea in general.
- 982. Provency or validity in general; voluntariness.
- 983. Mistake or misunderstanding.
- 984. Mental capacity.
- 985. Violation of rights; illegal evidence.
- 986. Factual basis for guilty plea.
- 986.1. — In general.
- 987. — Particular cases.
- 988. — Inconsistent statements or evidence.
- 989. — Validity of plea to lesser offense.
- 990. Pretrial agreement.
See also Ⓒ1326.
- 990.1. — In general.
- 991. — Negotiations.
- 992. — Terms and conditions in general.
- 993. — Post-trial misconduct clauses.
- 994. — Public policy.
- 995. — Advice to accused; judicial inquiry.
See also Ⓒ998.
- 996. — Modifications.
- 997. — Compliance with terms and conditions; effects of noncompliance.
- 998. Inquiry, advice, and warnings; determination of validity.
See also Ⓒ995.
- 998.1. — In general.
- 999. — Effect of deficiency.
- 1000. Effect of guilty plea; waiver of objections and defenses.

V. EVIDENCE AND WITNESSES.

- 1020. Evidence in general.
- 1021. Judicial notice of adjudicative facts or law.
- 1022. Presumptions and burden of proof.
Offenses and criminal responsibility, see also Ⓒ557, 563, 569 et seq.; *defenses, see also* Ⓒ834, 836-853.
- 1023. Admissibility and effect in general.
- 1024. Relevancy and its limits.
- 1025. — In general.
- 1026. — Balancing relevancy.
- 1027. — Character evidence in general.
- 1028. — Other offenses of accused.
- 1029. — Habit; routine practice.
- 1030. — Subsequent remedial measures in general.

258A. MILITARY JUSTICE

V. EVIDENCE AND WITNESSES.(Cont'd)

- 1031. — Compromise and offers to compromise.
- 1032. — Payment of medical and similar expenses.
- 1033. — Pleas, plea discussions and related statements.
- 1034. — Liability insurance.
- 1035. — Sexual offenses; victim's past behavior.
- 1036. Degrading questions.
- 1037. Demonstrative, real and fungible evidence in general.
- 1038. Drugs and narcotics.
- 1038.1. — In general.
- 1039. — Chain of custody.
- 1040. Documentary evidence in general.
Business and public records exceptions to hearsay rule, see also §1093.
- 1041. Authentication in general.
- 1042. Photographs.
- 1043. Contents of writings, recordings, and photographs; best evidence.
- 1044. Illegally obtained evidence in general.
- 1045. Evidence obtained from searches and seizures in general.
- 1045.1. — In general.
- 1046. — Unlawful searches in general.
- 1047. — Application of Fourth Amendment to military.
- 1048. — Persons conducting, instigating or participating in search.
- 1049. Bodily views and intrusions.
- 1049.1. — In general.
- 1050. — Visual examination.
- 1051. — Intrusion into body cavities.
- 1052. — Seizure of bodily fluids.
- 1053. — Intrusions for medical purposes.
- 1054. — Medical qualifications.
- 1056. Administrative inspections.
- 1057. Administrative inventories.
- 1058. Searches not requiring probable cause.
- 1058.1. — In general.
- 1059. — Border searches.
- 1060. — Searches upon entry to installations, aircraft and vessels abroad.
- 1061. — Searches of government property.
- 1062. — Consent searches.
- 1063. — Frisks incident to a stop.

V. EVIDENCE AND WITNESSES.(Cont'd)

- 1064. — Searches incident to an apprehension.
- 1065. — Searches within jails and confinement facilities.
- 1066. — Emergency searches to save life.
- 1067. — Searches of open fields or woodlands.
- 1068. Probable cause searches.
- 1068.1. — In general.
- 1069. — Probable cause in general.
- 1070. — Power to authorize.
- 1071. — Power to search.
- 1072. Probable cause determination.
- 1072.1. — In general.
- 1073. — Hearsay; reliability of informant.
- 1074. — Exigencies justifying search without authorization.
- 1075. Form, scope, and execution.
- 1076. Seizures.
- 1076.1. — In general.
- 1077. — Property or evidence; abandoned property.
- 1078. — Plain view.
- 1079. — Power to seize.
- 1080. Interception of wire and oral communications.
- 1081. Motions to suppress illegally obtained evidence and objections.
- 1081.1. — In general.
- 1082. — Standing to object.
- 1083. — Burden of proof.
- 1084. — Defense evidence.
- 1085. — Scope of motions and objections challenging probable cause.
- 1086. Hearsay in general.
- 1087. Definitions.
- 1088. Hearsay exceptions; availability of declarant immaterial.
- 1088.1. — In general.
- 1089. — Present sense impression; excited utterance.
- 1090. — Then existing mental, emotional, or physical condition.
- 1091. — Statements for purposes of medical diagnosis or treatment.
- 1092. — Recorded recollection.
- 1093. — Records of regularly conducted activity; public records.

See also §1040.

258A. MILITARY JUSTICE

V. EVIDENCE AND WITNESSES.(Cont'd)

- 1094. — Absence of record or entry.
- 1095. — Residual exception.
- 1096. Hearsay exceptions; declarant unavailable.
- 1097. — In general; definitions.
- 1098. — Exceptions.
- 1099. Identification evidence.
- 1099.1. — In general.
- 1100. — Improper pretrial identification process.
- 1101. — Independent basis for in-court identification.
- 1102. — Motions to suppress and objections.
- 1103. — Burden of proof.
- 1104. — Defense evidence.
- 1105. — Rulings.
- 1106. Confessions and admissions.
- 1106.1. — In general.
- 1107. — Involuntary statements or derivative evidence in general.
- 1108. — Effect of illegal detention or illegally obtained evidence.
- 1109. — Warnings about rights.
- 1110. — Warnings concerning accusation, right to remain silent and use of statements.
- 1111. — Counsel rights and warnings.
- 1112. — Notice to counsel.
- 1113. — Exercise of rights; termination of questioning.
- 1114. — Waiver.
- 1115. Corroboration of confession.
- 1116. Procedure; motions and objections regarding confessions.
- 1116.1. — In general.
- 1117. — Burden of proof.
- 1118. — Defense evidence.
- 1119. Statements by one of several accused.
- 1120. Opinions and expert testimony.
Examination and cross-examination, see also ¶1141 *et seq.*
- 1121. Weight and sufficiency.
Offenses and criminal responsibility, see also ¶557, 563, 569 *et seq.*; *Defenses, see also* ¶835–853.
- 1121.1. — In general.
- 1122. — Jurisdiction.
- 1123. Witnesses in general.
- 1124. Compulsory process; refusal to appear or testify.

V. EVIDENCE AND WITNESSES.(Cont'd)

- 1125. Competency of witnesses.
- 1126. Privileges.
- 1126.1. — In general.
- 1127. — Lawyer—client.
- 1128. — Husband—wife.
- 1129. — Physician—patient.
- 1130. — Identity of informant.
- 1131. — Waiver of privilege.
- 1132. — Comment upon or inference from claim of privilege; instruction.
- 1133. — Privilege concerning mental examination of an accused.
- 1134. Self-incrimination.
- 1134.1. — In general.
- 1135. — Standing.
- 1136. — Waiver by a witness.
- 1137. — Waiver by accused.
- 1138. — Effect of claiming privilege.
- 1139. — Instructions.
- 1140. Immunity or agreement; informers.
- 1141. Examination of witnesses in general.
- 1142. Cross-examination in general.
- 1143. Impeachment and corroboration.
- 1143.1. — In general.
- 1144. — Interest and bias of witness.
- 1145. — Character and conduct in general.
- 1146. — Prior convictions.
- 1147. Writing used to refresh memory.
- 1148. Prior statements of witnesses.
- 1149. Examining witness concerning prior statement.
- 1149.1. — In general.
- 1150. — Extrinsic evidence of prior inconsistent statement.
- 1151. Calling and interrogation of witnesses by court-martial.
- 1152. Exclusion of witnesses; sequestration.

VI. TIME FOR TRIAL AND CONTINUANCE.

- 1170. Time for trial and speedy trial in general.
- 1171. Delay in trial.
- 1172. — In general.
- 1173. — Demand for trial; objections to delay; waiver.
- 1174. — Delay when pretrial confinement or restraint.
- 1175. — Government delay.

258A. MILITARY JUSTICE

VI. TIME FOR TRIAL AND CONTINUANCE.(Cont'd)

- 1176. — Defense delay.
- 1177. — Accountability; computation of delay.
- 1178. — Reasonable diligence; excuses for delay.
- 1179. Delay in preferring or forwarding charges.
- 1180. Delay in pretrial investigation.
- 1180.1. — In general.
- 1181. — Absence of evidence and witnesses.
- 1182. Delay when multiple or additional charges or specifications.
- 1183. Timeliness of rehearing.
- 1184. Effect of delay; remedy.
- 1185. Motions and determination thereof.
- 1186. Presumption of prejudice; rebuttal.
- 1187. Continuances.
- 1187.1. — In general.
- 1188. — Grounds.

VII. TRIAL.

Excludes arraignment and plea, see ¶980-1000.

- 1210. Trial.
- 1210.1. — In general.
- 1211. — Declaration of mistrial in general.
- 1212. — Behavior of members.
- 1213. — Applicability of Fed. R. Crim. P.
- 1214. Fair trial; pretrial publicity.
- 1214.1. — In general.
- 1215. — Fair trial in general.
- 1216. — Pretrial publicity.
- 1217. Joint and common trials.
See ¶959 for multiplicitious charging.
- 1217.1. — In general.
- 1218. — Joinder of all known charges.
- 1219. — Motion for severance.
- 1220. — Joint and common trials.
- 1221. — Motion for severance.
- 1222. Public trial.
- 1222.1. — In general.
- 1223. — Constitutional questions.
- 1224. — Standards for exclusion of spectators.
- 1225. — Classified and other governmental information.
- 1226. Place of trial; change of venue.
- 1227. Accused's right to be present; waiver.

VII. TRIAL.(Cont'd)

- 1228. Custody and restraint of accused.
- 1229. Presence of members.
- 1230. Statements and conduct of military judge.
- 1230.1. — In general.
- 1231. — Advice to accused.
- 1232. — Questioning witnesses.
- 1233. — Ex parte communications.
- 1234. — As witness.
- 1235. Trial counsel.
Excludes conduct and argument, see ¶1253-1262.
- 1235.1. — In general.
- 1236. — Detailing.
- 1237. — Qualifications and disqualifications.
- 1238. Defense counsel.
Excludes conduct and argument, see ¶1253-1262.
- 1238.1. — In general.
- 1239. — Detailing.
- 1240. — Qualifications.
- 1241. — Establishing and severing attorney-client relationship.
- 1242. — Effective assistance of counsel; multiple representation.
- 1243. — Individual military counsel.
- 1244. — Post-trial duties.
Appellate counsel, see ¶1412.
- 1245. — Civilian counsel.
- 1246. Mental capacity to stand trial.
- 1247. Reception of evidence.
- 1247.1. — In general.
- 1248. — Accused's right of confrontation with witnesses.
- 1249. Stipulations.
- 1249.1. — In general.
- 1250. — Fact.
- 1251. — Expected testimony.
- 1252. — Confessional stipulation.
- 1253. Argument of counsel.
- 1254. — In general.
- 1255. — Personal opinions.
- 1256. — Inflammatory argument.
- 1257. — Based on matters in evidence.
- 1258. — Comment on accused's request for counsel.
- 1259. — Comment on accused's failure to make statement or to testify.
- 1260. Conduct of counsel.
- 1260.1. — In general.

258A. MILITARY JUSTICE

VII. TRIAL.(Cont'd)

- 1261. — Ex parte communications.
- 1262. — Duty of trial counsel to disclose material favorable to defense.
- 1263. Instructions.
- 1263.1. — In general.
- 1264. — Duty to instruct; evidence raising issues.
- 1265. — Lesser included offenses.
- 1266. — Defenses.
- 1267. — On evidence.
- 1268. — Sufficiency or propriety; error cured by other instructions.
- 1269. — Requests and objections.
- 1270. Deliberations and voting.
- 1270.1. — In general.
- 1271. — Members' requests for additional evidence.
- 1272. Findings.
Excludes lesser included offenses, see ¶965, 966.
- 1272.1. — In general.
- 1273. — Announcement.
- 1274. — Special findings, requests for.
- 1275. — Impeachment.
- 1276. — Correction; reconsideration.
- 1277. New trial.
- 1278. Objections; waiver.

VIII. SENTENCE.

- 1300. Presentencing procedure.
- 1300.1. — In general.
- 1301. — Deliberations.
- 1302. — Announcement.
- 1303. — Reconsideration.
- 1304. — Requests for additional evidence.
- 1305. Presentencing evidence.
- 1305.1. — In general.
- 1306. — Matters in aggravation.
- 1307. — Matters in extenuation and mitigation.
- 1308. — Right of allocution.
- 1309. — Unsworn statements.
- 1310. Use of records of convictions.
- 1310.1. — In general.
- 1311. — Summary courts-martial without counsel.
- 1312. Use of records of non-judicial punishment.
- 1312.1. — In general.

VIII. SENTENCE.(Cont'd)

- 1313. — Right to confer with counsel; waiver.
- 1314. — Right to object.
- 1315. — Records; service regulations.
- 1316. Presentencing argument.
- 1316.1. — In general.
- 1317. — Inflammatory argument.
- 1318. — Evidence of record.
- 1319. — Sentencing philosophies.
- 1320. — Number and order of arguments.
- 1321. Military judges role; instructions.
- 1322. Nature and extent of punishment.
- 1322.1. — In general.
- 1323. — Maximum punishments.
- 1324. — Sentence credit.
- 1325. Separate or multiplicitous offenses.
- 1326. Effect of pretrial agreement.
See also ¶990-997.
- 1327. Construction and operation of sentence; effective date.
- 1328. Execution of sentence.
- 1328.1. — In general.
- 1329. — Place of confinement.
- 1330. — Good time computations; parole.
- 1331. — Suspension.

IX. RECORD OF TRIAL.

- 1351. Preparation.
- 1352. Authentication.
- 1353. Certificate of correction.
- 1354. Verbatim record of trial.
- 1355. Sufficiency to permit review.
- 1356. Sufficiency to support punishment.
- 1357. Classified information; protection and access.

X. REVIEW OF COURTS-MARTIAL.

(A) INITIAL ACTION ON RECORD.

- 1380. Convening authority; review and approval.
- 1381. Disqualification of convening authority.
- 1381.1. — In general.
- 1382. — Grants of immunity or clemency.
- 1383. — Other than official interest.
- 1384. Speedy review and action.
- 1385. Staff judge advocate or legal officer's review.
- 1385.1. — In general.

259. MILITIA

X. REVIEW OF COURTS-MARTIAL.(Cont'd)

- 1386. — Service on defense counsel; substitute counsel.
- 1387. — Disqualification of officer.
- 1388. — Sufficiency; matters considered or omitted.
- 1389. — Discussion of evidence.
- 1390. — Consideration of defenses.
- 1391. — Matters affecting sentence; clemency.
- 1392. — Incorrect or misleading advice, opinion, or statement.
- 1393. Defense response; opportunity for rebuttal.
- 1393.1. — In general.
- 1394. — Waiver of errors or defects.
- 1395. Determination or relief; approval; matters considered.
- 1395.1. — In general.
- 1396. — Withdrawal; substitution of new action.
- 1397. — Reconsideration; revision.
- 1398. — Reassessment; execution.
- 1399. — Suspension; deferment; commutation of sentence; probation.
- 1400. — Clemency.

(B) FURTHER REVIEW.

1. IN GENERAL.

- 1410. Review by the Judge Advocate General.
- 1411. Review by the Court of Criminal Appeals (formerly, the Court of Military Review).
- 1412. Appellate counsel.
- 1413. Decisions reviewable.
- 1414. Preservation of grounds of review; waiver; plain error.
- 1414.1. — In general.
- 1415. — Admission or exclusion of evidence.
- 1416. — Trial matters in general.
- 1417. — Delay in proceedings.
- 1418. Record and proceedings not in record.
- 1419. Scope of review in general.
- 1420. Discretion of military judge.
- 1421. Presumptions.
- 1422. Questions of fact.
- 1423. Harmless or prejudicial error; test for reversible error.
- 1423.1. — In general.

X. REVIEW OF COURTS-MARTIAL.(Cont'd)

- 1424. — Pretrial proceedings.
- 1425. — Evidence and witnesses.
- 1426. — Trial matters.
- 1427. — Sentence and sentencing procedure.
- 1428. — Post-trial proceedings.
- 1429. — Delay in proceedings.
- 1430. Appellate disposition.
- 1430.1. — In general.
- 1431. — Affirmance; included offenses.
- 1432. — Dismissal.
- 1433. — Reassessment to cure error.
- 1434. — Remand; rehearing.
- 1435. Matters peculiar to review by the Court of Appeals for the Armed Forces (formerly, the Court of Military Appeals).
- 1435.1. — In general.
- 1436. — Petitions; time for filing.
- 1437. — Certified questions.
- 1438. — Rules of court.
- 1439. — Abatement of appellate review.

2. APPEALS BY UNITED STATES.

- 1450. In general.
- 1451. Scope of review.

XI. EXTRAORDINARY RELIEF.

- 1460. Power to grant and availability in general.
- 1461. Pretrial and post-trial restraint.
- 1462. Writ of error coram nobis.

XII. REVIEW BY CIVILIAN COURTS.

- 1480. Review in general.
- 1481. Habeas corpus.

259. MILITIA

SUBJECTS INCLUDED

National Guard and other armed forces under the control of the states for training and for service in emergencies
Liability to service therein

259. MILITIA

Enrollment, organization, and discipline
Rights, powers, duties, and liabilities of officers and members
Control and employment in actual service
Offenses against the laws applicable thereto and the military courts administering such laws

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Exemption of members of the militia from other public service, from taxation, etc., see JURY, TAXATION, and other specific topics

Militia called into the service of the general government, see ARMED SERVICES

Right to bear arms in general, see WEAPONS

1. Power to maintain, regulate, and control.
2. Constitutional and statutory provisions.
3. Establishment and organization.
4. Expenses of maintenance, and funds therefor.
5. Duty of service.
6. Exemptions from service.
7. Officers.
8. Enlistment or enrollment.
9. Term of service.
10. Discharge.
11. Pay and allowances.
12. Civilian employees and contractors.
13. Arms and equipments.
14. Discipline and training in general.
15. Employment in actual service.
16. Encampments.
17. Armories and other buildings.
19. Civil liabilities of members of militia.
20. Offenses by members of militia.
21. Courts-martial.
22. Unauthorized military organizations.

260. MINES AND MINERALS

SUBJECTS INCLUDED

Mineral substances, solid or fluid, found beneath the surface of the earth, lands con-

taining such minerals, and mines and mining claims or rights

Statutory provisions relating thereto

Acquisition, ownership, and transfer of mining claims and rights

Organization, powers, and franchises of mining partnerships and companies

Rights, duties, and liabilities of proprietors of mineral lands and mines, in respect of the working of their mines, otherwise than in their capacity of employers

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Employers, duties and liabilities as, of those working mines, see LABOR AND EMPLOYMENT

Indian mineral rights, see INDIANS ¶191

Partnerships and corporations, matters applicable to in general, see PARTNERSHIP, CORPORATIONS AND BUSINESS ORGANIZATIONS

Subterranean waters, rights and liabilities respecting, see WATER LAW

- I. PUBLIC MINERAL LANDS, ¶1-46.
 - (A) RESERVATION AND DISPOSAL IN GENERAL, ¶1-8.
 - (B) LOCATION AND ACQUISITION OF CLAIMS, ¶9-38.
 - (C) PATENTS, ¶39-46.
- II. TITLE, CONVEYANCES, AND CONTRACTS, ¶47-85.
 - (A) RIGHTS AND REMEDIES OF OWNERS, ¶47-52.
 - (B) CONVEYANCES IN GENERAL, ¶53-55.
 - (C) LEASES, LICENSES, AND CONTRACTS, ¶56-85.
 1. IN GENERAL, ¶56-60.
 2. CONSTRUCTION AND OPERATION OF MINING LEASES, ¶62-71.
 3. CONSTRUCTION AND OPERATION OF OIL AND GAS LEASES, ¶73-81.
 4. CONSTRUCTION AND OPERATION OF LICENSES AND CONTRACTS, ¶83-85.
- III. OPERATION OF MINES, QUARRIES, AND WELLS, ¶86-125.
 - (A) STATUTORY AND OFFICIAL REGULATIONS, ¶86-95.

260. MINES AND MINERALS

III. OPERATION OF MINES, QUARRIES, AND WELLS—Cont'd

(B) MINING PARTNERSHIPS AND COMPANIES, ¶96–108.

(C) RIGHTS AND LIABILITIES INCI- DENT TO WORKING, ¶109–125.

I. PUBLIC MINERAL LANDS.

(A) RESERVATION AND DISPOSAL IN GENERAL.

1. Ownership of minerals.
 2. Reservation of lands of United States.
 3. Grants to states.
 4. Grants by government of minerals and mining rights.
 - 4.5. Leases by government.
 5. — In general.
 - 5.1. — Federal leases.
 - (1). In general.
 - (2). Administrative discretion.
 - (3). Lands subject to lease.
 - (4). Persons entitled and priorities.
 - (5). Construction and effect in general.
 - (6). Assignment of leases.
 - (7). Duration, extension and termination.
 - (8). Rent and royalties.
 - (9). Judicial remedies.
 - (9.1). — In general.
 - (10). — Evidence and fact questions.
 - 5.2. — State leases.
 - (1). In general.
 - (2). Texas.
 - (2.1). — In general.
 - (3). — Lease by surface owner under Relinquishment Act.
 - (4). — Vacant land; unsurveyed and unlisted school lands.
 - 5.3. — Other government leases.
 6. Licenses by government.
 - 6.5. Surveys.
 7. Trespasses.
 8. Offenses incident to disposal of mineral lands.
- (B) LOCATION AND ACQUISITION OF CLAIMS.
9. Lands open to location and acquisition.
 10. Persons entitled to acquire lands.
 11. — In general.

I. PUBLIC MINERAL LANDS.(Cont'd)

12. — Citizenship and residence.
13. Requisites and validity of location proceedings.
14. — In general.
 - (1). In general.
 - (2). Location by agent.
15. — Effect of local customs and miners' rules.
16. — Veins, lodes, or placer grounds subject to location.
17. — Discovery.
 - (1). In general.
 - (2). Discovery shaft or opening.
 - (3). Discovery of vein in tunnel claims.
18. — Extent and boundaries of claim.
19. — Posting notice.
 - (1). In general.
 - (2). Alterations and additions and variations between notice and ground marks.
20. — Marking boundaries on the ground.
 - (1). In general.
 - (2). Alteration or obliteration of boundaries.
 - (3). Placer claims.
 - (4). Mill sites.
21. — Certificate or declaratory statement.
 - (.5). In general.
 - (.6). Necessity.
 - (1). Requisites and sufficiency.
 - (2). Variation of description from ground marks.
 - (3). Amended or additional certificates.
 - (4). Conclusiveness.
22. — Record.
23. — Development and improvement.
 - (.5). In general.
 - (1). Necessity and amount.
 - (2). Nature and locus of work and improvements.
 - (3). Time of performance.
 - (4). Affidavit of work.
 - (5). Default in assessment work.
 - (5.1). — In general.
 - (6). — Default of cotenants or co-locators.

260. MINES AND MINERALS

I. PUBLIC MINERAL LANDS.(Cont'd)

- (7). — Effect of resuming work after default.
- 24. — Abandonment.
- 25. — Forfeiture.
- 26. — Relocation.
- 27. — Conflicting locations.
 - (1). In general.
 - (2). Between lode and tunnel, placer, or mill locations.
 - (3). Default of senior locator.
 - (4). Agreements of parties.
- 28. Rights acquired.
- 29. — In general.
- 29.1. — Nature of property in claims.
- 29.2. — Title by adverse possession.
- 29.3. — Rights in general under valid location.
- 29.4. — Rights under defective location.
 - (1). In general.
 - (2). Estoppel.
- 29.5. — Rights under occupation without location.
- 30. — Right to vein or lode having apex within claim in general.
- 31. — Extralateral rights under vein or lode location.
 - (1). In general.
 - (2). Shape and position of claim.
 - (3). Continuity of vein.
- 32. — Cross or united veins.
- 33. — Veins in tunnel locations.
- 34. Transfer of claims or rights under locations.
- 35. Coal lands.
- 36. Oil and gas lands.
- 37. Saline lands.
- 38. Actions to determine and establish rights.
 - (5). In general.
 - (1). Nature and form of remedy.
 - (2). Rights of action and defenses.
 - (3). Determination as to citizenship.
 - (4). Parties.
 - (5). Limitations and laches.

See also LIMITATION OF ACTIONS.

 - (6). Jurisdiction.
 - (7). Injunction and receivers.
 - (8). Inspection and view.
 - (9). Complaint or bill.

I. PUBLIC MINERAL LANDS.(Cont'd)

- (9.1). — In general.
- (10). — Allegations as to citizenship or other qualification.
- (11). — Allegations as to possession or ownership and description of property.
- (12). Plea, answer, and demurrer.
- (13). Issues, proof, and variance.
- (14). Presumptions and burden of proof.
- (15). Admissibility and weight of evidence.
- (15.1). — In general.
- (16). — Ownership or possession.
- (17). — Discovery.
- (18). — Extent and position of claim and vein.
- (19). — Marks and monuments.
- (20). — Development and assessment.
- (21). — Abandonment and forfeiture.
- (22). Province of court and jury.
- (23). Instructions.
- (24). Verdict and findings.
- (25). Judgment.
- (25.1). — In general.
- (26). — For defendant or neither party.
- (27). Appeal.
- (28). Costs.

(C) PATENTS.

- 39. Right to patent in general.
- 40. Application, and proceedings thereon.
- 41. Adverse claims, and proceedings thereon.
- 42. Requisites and validity.
- 43. Construction and operation in general.
- 44. Conclusiveness.
- 45. Cancellation.
- 46. Existence and enforcement of trust.

II. TITLE, CONVEYANCES, AND CONTRACTS.

(A) RIGHTS AND REMEDIES OF OWNERS.

- 47. Title in general.
- 48. What are minerals and nature of property in minerals.
- 49. Adverse possession.

260. MINES AND MINERALS

II. TITLE, CONVEYANCES, AND CONTRACTS.(Cont'd)

- 50. Recovery of possession of lands or mines.
- 51. Recovery for trespass or conversion.
 - (1). In general.
 - (2). Form of remedy.
 - (3). Pleading and evidence.
 - (4). Trial.
 - (5). Damages.
- 52. Injunction and receivers.

(B) CONVEYANCES IN GENERAL.

- 53. Options.
- 54. Sales of land with minerals.
 - (5). In general.
 - (1). Requisites and validity.
 - (2). Construction and operation.
 - (3). Remedies and defenses in general.
 - (4). Fraud and rescission or cancellation.
- 54.5. Mortgages.
- 55. Grants and reservations of minerals and mining rights.
 - (5). In general.
 - (1). Requisites and validity.
 - (2). Construction and operation in general.
 - (3). Distinction between conveyance or sale and license or lease.
 - (4). Nature of estate granted or reserved.
 - (5). Kind, quantity, and location of minerals granted or reserved.
 - (6). Servitudes granted, retained, or reserved.
 - (7). Conveyance, abandonment, or other termination of rights granted or reserved.
 - (8). Remedies.

(C) LEASES, LICENSES, AND CONTRACTS.

1. IN GENERAL.

- 56. Nature of mining leases and agreements.
- 57. Agreements for leases.
- 58. Requisites and validity.
- 59. Modification or rescission.
- 60. Estoppel of lessee to deny title of lessor.

2. CONSTRUCTION AND OPERATION OF MINING LEASES.

- 62. In general.
 - 62.1. Premises demised and rights acquired.
 - 62.2. Liability for taxes and assessments.
- 63. Term.
- 64. Assignment or sale of lease or reversion.
- 65. Extension or renewal.
- 66. Surrender, abandonment, or forfeiture.
- 67. Eviction.
- 68. Testing or working.
 - (1). In general.
 - (2). Forfeiture for breach.
 - (3). Waiver of forfeiture.
- 69. Improvements.
- 70. Rent or royalties.
 - (1). In general.
 - (2). Amount and time of payment.
 - (3). Rent or royalties dependent on existence of mineral.
 - (4). Forfeiture and re-entry for non-payment.
 - (5). Lien for rent or royalties.
 - (6). Actions.
- 71. Rights and liabilities as to third persons.

3. CONSTRUCTION AND OPERATION OF OIL AND GAS LEASES.

- 73. In general; general rules of construction.
 - 73.1. Premises demised and rights acquired.
 - (1). In general.
 - (2). Rights or interests acquired in general.
 - (3). Interest in real estate.
 - (4). Title to oil and gas.
 - (5). Covenants and warranties.
 - (6). Use and enjoyment of premises; surface rights and liabilities.
 - (7). Kind and quantity of minerals.
 - (8). Liability for taxes and assessments.
 - 73.2. Construction against lessee or in favor of development.
 - 73.5. Term.
- 74. Assignment or sublease.
 - (1). In general.
 - (2). Requisites and validity.
 - (3). Construction and operation of assignment or sale in general.
 - (4). Rights and liabilities as to lessor.

260. MINES AND MINERALS

II. TITLE, CONVEYANCES, AND CONTRACTS.(Cont'd)

- (5). Rights and liabilities as between assignor and assignee.
- (6). Rights and liabilities as to third persons.
- (7). Construction and operation of sublease.
- (8). Contracts for assignment or sublease.
- (9). Actions.
 - (9.1). — In general.
 - (10). — Evidence and questions for jury.
- 74.5. Transfer of reversion.
- 75. Extension or renewal.
- 76. Eviction.
- 77. Surrender, abandonment, or forfeiture.
- 78. Testing or working.
- 78.1. — Construction, breach, and penalties.
 - (1). In general.
 - (2). Implied obligation.
 - (3). Payments in lieu; delay rentals, etc.
 - (4). Continuance and extent of development after initial testing.
 - (5). Secondary recovery methods.
 - (6). Depth, number and location of wells.
 - (7). Place or portion developed; pooled or unitized tracts.
 - (8). Extent of production, paying quantities, and marketing.
 - (9). Time for development; commencement, completion, and interruptions.
 - (10). Excuses for delay or failure.
 - (11). Protection against waste or drainage; offset wells.
- 78.2. — Forfeiture for breach in general.
- 78.3. — Demand and notice before forfeiture.
- 78.4. — Exercise of election to forfeit lease.
- 78.5. — Waiver of forfeiture or breach.
- 78.6. — Operation and effect of forfeiture.
- 78.7. — Actions.
 - (1). In general.
 - (2). Parties and pleading.

II. TITLE, CONVEYANCES, AND CONTRACTS.(Cont'd)

- (3). Evidence.
 - (3.1). — In general.
- (4). — Weight and sufficiency.
- (5). Trial.
- (6). Judgment and relief; damages.
- 78.8. — Other matters.
- 79. Rent or royalties.
- 79.1. — In general.
 - (.5). In general.
 - (1). Rights and liabilities.
 - (2). Nature and distinctions; bonus.
 - (3). Persons entitled in general; apportionment and division orders.
 - (4). Transfer or assignment.
 - (5). Community leases, unitization, or pooling arrangements.
- 79.2. — Rent or royalties dependent on existence of oil or gas.
- 79.3. — Amount and time of payment.
- 79.4. — Mode of payment.
- 79.5. — Furnishing gas or oil to lessor.
- 79.6. — Forfeiture and re-entry for non-payment.
- 79.7. — Actions.
- 80. Improvements.
- 81. Rights and liabilities as to third persons.

4. CONSTRUCTION AND OPERATION OF LICENSES AND CONTRACTS.

- 83. Rights and liabilities of parties.
- 84. Revocation.
- 85. Contracts to procure title.

III. OPERATION OF MINES, QUARRIES, AND WELLS.

(A) STATUTORY AND OFFICIAL REGULATIONS.

- 86. Statutory provisions in general.
- 86.5. Government operation.
- 87. Licenses; severance and production taxes.
- 88. Rights of way.
- 90. Tailings and debris.
- 91. Escape of oil or gas.
- 92. Mode of working in general.
 - 92.1. Oil and gas in general.
 - 92.2. Power to regulate.
 - 92.3. Validity of statutes.
 - (1). In general.

260. MINES AND MINERALS

III. OPERATION OF MINES, QUARRIES, AND WELLS.(Cont'd)

- (2). Oil and gas.
- 92.5. Federal law and regulations.
 - (1). In general.
 - (2). Coal mining.
 - (3). Oil and gas.
- 92.8. State law and regulations in general.
- 92.9. Coal mining.
- 92.10. — In general.
- 92.11. — Prosecutions and remedies.
- 92.12. Oil and gas in general.
- 92.13. — In general.
- 92.14. — Waste.
- 92.15. Powers and proceedings of commissions and officers in general.
- 92.16. — In general.
- 92.17. — Procedure in general.
- 92.18. — Examination of books and records.
- 92.19. — Reports.
- 92.20. — Effect of determination, and presumption of validity.
- 92.21. — Judicial review.
- 92.22. Particular modes of regulation in general.
- 92.23. Location, drilling, and spacing rules in general.
 - (1). In general.
 - (2). Validity of spacing rules.
- 92.25. Permits and exceptions as to location.
- 92.26. — In general; confiscation, discrimination and equality.
- 92.27. — Density and pattern of drilling, and drainage.
- 92.28. — Prevention of waste.
- 92.29. — Segregation and subdivision.
- 92.30. — Vested rights.
- 92.31. — Title or boundary in dispute.
- 92.32. Procedure before commissions as to location.
 - (1). In general.
 - (2). Effect of determination; presumption of validity.
- 92.34. Judicial review as to location.
- 92.35. — In general; parties.
- 92.36. — Time to sue or appeal.
- 92.37. — Injunction and bond.
- 92.38. — Evidence and fact questions in general.

III. OPERATION OF MINES, QUARRIES, AND WELLS.(Cont'd)

- 92.39. — Admissibility of evidence and trial de novo.
- 92.40. — Scope of review, and relief granted.
- 92.41. — Effect of judicial review.
- 92.42. Directional wells.
- 92.43. Regulation of production in general.
- 92.44. Methods of production.
 - (1). In general.
 - (2). Gas and use thereof.
 - (3). Salvaging waste or abandoned oil.
 - (4). Use of vacuum.
- 92.48. Amount of production and proration in general.
- 92.49. — In general; waste.
- 92.50. — Common reservoir, and well potential.
- 92.51. — Confiscation, discrimination and equality.
- 92.52. — Density and pattern of drilling, and drainage.
- 92.53. — Economic waste and market demand.
- 92.54. — Gas in general, and gas-oil ratio.
- 92.55. — Marginal wells.
- 92.56. — Shutdown.
- 92.57. — Variations and exceptions.
- 92.58. — Vested rights.
- 92.59. Procedure before commissions, amount of production.
 - (1). In general.
 - (2). Effect of determination; presumption of validity.
- 92.61. Judicial review, amount of production.
- 92.62. — In general; evidence and fact questions.
- 92.63. — Injunction.
- 92.64. — Scope of review and relief granted.
- 92.65. — Effect of judicial review.
- 92.66. Disposition, sale and transportation in general.
- 92.67. — In general.
- 92.68. — Unlawfully produced oil.
- 92.69. — Procedure before commissions.
- 92.70. — Judicial review in general.
- 92.71. — Evidence and fact questions.
- 92.72. — Injunction.

260. MINES AND MINERALS

III. OPERATION OF MINES, QUARRIES, AND WELLS.(Cont'd)

- 92.73. Moving trapped waste oil.
- 92.74. — In general; application, information and reports.
- 92.75. — Procedure.
- 92.76. — Judicial review.
- 92.77. — Evidence and fact questions.
- 92.78. Unitization.
- 92.79. — In general; procedure.
- 92.80. — Contribution to expenses by owners of tracts or interests.
- 92.81. Violations of orders, and effect thereof.
- 92.82. — Location.
- 92.83. — Production.
- 92.84. — Remedies in general.
- 92.85. — Confiscation and forfeiture.
- 92.86. — Other matters.
- 93. Mine inspectors.
- 93.5. Sale of products.
- 94. Penalties for violations of regulations.
- 95. Criminal prosecutions.

(B) MINING PARTNERSHIPS AND COMPANIES.

- 96. Partnerships.
- 96.5. — In general.
- 97. — Creation and existence.
- 98. — Partnership property.
- 99. — Rights and liabilities of partners.
 - (1). In general.
 - (2). Rights of partners inter se.
 - (3). Contracts with third persons.
- 100. — Dissolution.
- 101. Associations, joint-stock companies, and other joint enterprises.
- 102. Corporations.
- 102.1. — In general.
- 103. — Incorporation and organization.
- 104. — Members and officers.
- 105. — Franchises and powers.
 - (1). In general.
 - (2). Representation of corporation by officers and agents.
- 106. — Rights and liabilities.
- 107. — Dissolution.
- 108. — Foreign corporations.

(C) RIGHTS AND LIABILITIES INCIDENT TO WORKING.

- 109. Contracts for testing or working.
- 110. Actions for labor or materials.
- 111. Liens.
- 111.1. — In general.
- 112. — Nature, grounds, and subject-matter in general.
 - (.5). In general.
 - (1). Construction and operation of statutory provisions in general.
 - (2). Grounds for lien.
 - (3). Property and interests subject to lien.
 - (4). Notice to prevent lien.
- 113. — Right to lien.
- 114. — Proceedings to perfect.
- 114.5. — Amount and extent.
- 115. — Waiver, loss, or discharge.
- 116. — Priority.
- 117. — Enforcement.
- 118. Personal injuries.
- 119. Injuries to animals.
- 120. Injuries to property.
- 121. — In general.
- 122. — Surface soil.
- 123. — Flooding lands and mines.
- 124. — Tailings and debris.
- 125. — Actions.

265. MONOPOLIES

SUBJECTS INCLUDED

Grants of exclusive or special privileges or immunities in respect of any occupation or business

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Antitrust statutes and regulations, see ANTI-TRUST AND TRADE REGULATION

Contracts in restraint of trade or commerce as governed by the common law, see CONTRACTS

266. MORTGAGES AND DEEDS OF TRUST

Corporate and other specific franchises, see CORPORATIONS AND BUSINESS ORGANIZATIONS, FRANCHISES, and other specific topics

Inventions, copyrights, and trademarks, exclusive rights under laws relating to, see PATENTS, COPYRIGHTS AND INTELLECTUAL PROPERTY, TRADEMARKS

Monopolizing or combining or attempting to monopolize trade or commerce, see ANTI-TRUST AND TRADE REGULATION

Privileges and immunities not relating to any occupation or business, grants of, see CONSTITUTIONAL LAW

1. Nature and validity in general.
2. Power to grant.
3. Grounds and purposes of grant.
4. Occupations and employments in general.
5. Trade and commerce.
6. Public franchises.
7. Revocation.

266. MORTGAGES AND DEEDS OF TRUST

SUBJECTS INCLUDED

Transfers of real property interests as security for payment of money or performance of obligations, whether made by mortgage, by similarly conditional or defeasible conveyance, by deed of trust, by security deed, or by transaction constituting an equitable mortgage

Nature, requisites, validity, enforceability, scope, operation, and effect of such transfers

Rights, duties, and liabilities of the parties as between themselves and as to others

Liens acquired by such transfers, and priorities as to competing liens and claims

Recording and registration of instruments and documents related to such transfers

Assignment or other transfer of the parties' interests

Enforcement of parties' interests by action or by foreclosure

Redemption

Reverse mortgages

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Adverse possession, mortgages and foreclosures as hostile possession against others, see ADVERSE POSSESSION ¶76

Attachment, mortgaged property as subject to, see ATTACHMENT ¶52

Bankruptcy and bankruptcy law, effect on mortgages, see BANKRUPTCY

Cemetery property, power to mortgage, see CEMETERIES ¶13

Consumer credit statutes and regulations, operation and effect of, see FINANCE, BANKING, AND CREDIT III, XVI

Consumer protection statutes and regulations, operation and effect of, see ANTITRUST AND TRADE REGULATION III

Copyright mortgages, see COPYRIGHTS AND INTELLECTUAL PROPERTY ¶43

Corporate franchises and property, mortgages of, see also CORPORATIONS AND BUSINESS ORGANIZATIONS, RAILROADS, and other specific topics

Easements, rights as against mortgagees of servient tenement, see EASEMENTS ¶20

Execution, mortgaged property as subject to, see EXECUTION ¶36

Fixtures, rights of mortgagors and mortgagees as to, see FIXTURES ¶18

Fraudulent mortgages as to creditors or subsequent purchasers, see FRAUDULENT CONVEYANCES

Garnishment, mortgaged property as subject to, see GARNISHMENT ¶30

Guaranties of mortgages, see GUARANTY

Homestead rights and exemptions, see HOMESTEAD

Maritime matters, mortgages involving, see ADMIRALTY, SHIPPING

Military members, mortgages involving, see ARMED SERVICES ¶34.7

Mines and minerals, mortgages involving, see MINES AND MINERALS ¶54.5

Particular classes of persons, mortgages by or to, see INFANTS, MARRIAGE AND COHABITATION, MENTAL HEALTH, and other specific topics

266. MORTGAGES AND DEEDS OF TRUST

Personal property, security arrangements concerning, see CHATTEL MORTGAGES, SECURED TRANSACTIONS

Public property, power to mortgage, see COUNTIES, MUNICIPAL CORPORATIONS, and other government topics

Representative or fiduciary capacities, mortgages by persons in, see GUARDIAN AND WARD, EXECUTORS AND ADMINISTRATORS, PRINCIPAL AND AGENT, TRUSTS

Subrogation to rights of mortgagees, see SUBROGATION

I. IN GENERAL, ¶701-710.

II. NATURE AND REQUISITES, ¶711-850.

- (A) IN GENERAL, ¶711-730.
- (B) FORMAL REQUISITES, ¶731-770.
- (C) VALIDITY AND ENFORCEABILITY, ¶771-800.
- (D) CONSIDERATION, ¶801-820.
- (E) CHARACTERIZATION OF TRANSACTION AS MORTGAGE; EQUITABLE MORTGAGES, ¶821-850.

III. CONSTRUCTION IN GENERAL, ¶851-870.

IV. PARTIES TO TRANSACTION, ¶871-890.

V. SCOPE, OPERATION, AND EFFECT OF TRANSACTION; RIGHTS, DUTIES, AND LIABILITIES OF PARTIES, ¶891-1260.

- (A) IN GENERAL, ¶891-910.
- (B) DEBTS OR LIABILITIES SECURED BY TRANSACTION, ¶911-940.
- (C) PROPERTY SUBJECT TO OR AFFECTED BY TRANSACTION, ¶941-1040.
 - 1. IN GENERAL, ¶941-960.
 - 2. POSSESSION AND CONTROL OF PROPERTY, ¶961-980.
 - 3. USE AND MANAGEMENT OF PROPERTY, ¶981-1000.
 - 4. APPURTENANCES AND IMPROVEMENTS, ¶1001-1020.
 - 5. INJURIES TO PROPERTY, ¶1021-1040.
- (D) DISBURSEMENT AND DISPOSITION OF LOAN PROCEEDS, ¶1041-1050.
- (E) PAYMENT OR PERFORMANCE OF CONDITION, ¶1051-1090.

V. SCOPE, OPERATION, AND EFFECT OF TRANSACTION; RIGHTS, DUTIES, AND LIABILITIES OF PARTIES—Cont'd

- (F) RENTS AND PROFITS, ¶1091-1110.
 - (G) TAXES AND ASSESSMENTS, ¶1111-1120.
 - (H) INSURANCE, ¶1121-1130.
 - (I) MODIFICATION, ¶1131-1160.
 - (J) RELEASE, CANCELLATION, DISCHARGE, AND SATISFACTION, ¶1161-1180.
 - (K) OTHER TRANSACTIONS AND DEALINGS BETWEEN PARTIES, ¶1181-1200.
 - (L) RIGHTS, DUTIES, AND LIABILITIES OF TRUSTEES, ¶1201-1220.
 - (M) RIGHTS, DUTIES, AND LIABILITIES OF LOAN SERVICERS, NOMINEES, AND OTHER AGENTS OF LENDERS, ¶1221-1240.
 - (N) FIDUCIARY DUTIES, ¶1241-1260.
- ### VI. LIEN, ¶1261-1280.
- ### VII. RECORDING AND REGISTRATION, ¶1281-1300.
- ### VIII. RIGHTS AND CLAIMS OF NON-PARTIES; PRIORITY, ¶1301-1400.
- (A) IN GENERAL, ¶1301-1320.
 - (B) PARTICULAR COMPETING CLAIMS AND LIENS, PRIORITIES CONCERNING, ¶1321-1350.
 - (C) PURCHASE MONEY MORTGAGES, PRIORITIES CONCERNING, ¶1351-1360.
 - (D) AGREEMENTS AS TO PRIORITY, ¶1361-1370.
 - (E) EFFECT OF SUBSEQUENT CIRCUMSTANCES AND TRANSACTIONS, ¶1371-1390.
 - (F) EFFECT OF PARTIES' CONDUCT OR MISCONDUCT, ¶1391-1400.
- ### IX. ASSIGNMENT OR OTHER TRANSFER OF MORTGAGEE'S INTEREST, ¶1401-1540.
- (A) IN GENERAL, ¶1401-1430.
 - (B) CONSTRUCTION, OPERATION, AND EFFECT OF TRANSFER, ¶1431-1460.
 - (C) TRANSFER OF PART OF DEBT, ¶1461-1470.
 - (D) TRANSFERS INVOLVING SERVICING RIGHTS, PARTICIPATION ARRANGEMENTS, POOLING, OR SECURITIZATION, ¶1471-1490.

266. MORTGAGES AND DEEDS OF TRUST

IX. ASSIGNMENT OR OTHER TRANSFER OF MORTGAGEE'S INTEREST—Cont'd

- (E) RETRANSFER, Ⓒ1491-1500.
- (F) EQUITABLE TRANSFER, Ⓒ1501-1510.
- (G) TRANSFER TO MORTGAGOR OR PROPERTY OWNER, Ⓒ1511-1520.
- (H) EVIDENCE, Ⓒ1521-1530.
- (I) QUESTIONS OF LAW OR FACT, Ⓒ1531-1540.

X. ASSIGNMENT OR OTHER TRANSFER OF MORTGAGOR'S INTEREST, Ⓒ1541-1620.

- (A) IN GENERAL, Ⓒ1541-1550.
- (B) RIGHTS AND LIABILITIES OF TRANSFEREE, Ⓒ1551-1560.
- (C) ASSUMPTION OF MORTGAGE DEBT BY TRANSFEREE, Ⓒ1561-1580.
- (D) TRANSFER OF PART OF PROPERTY MORTGAGED, Ⓒ1581-1590.
- (E) TRANSFER TO MORTGAGEE, Ⓒ1591-1600.
- (F) EVIDENCE, Ⓒ1601-1610.
- (G) QUESTIONS OF LAW OR FACT, Ⓒ1611-1620.

XI. REMEDIES AND ENFORCEMENT IN GENERAL, Ⓒ1621-1640.

XII. ACTIONS AND PROCEEDINGS IN GENERAL, Ⓒ1641-1660.

XIII. FORECLOSURE, Ⓒ1661-2230.

- (A) IN GENERAL; NATURE, PURPOSE, AND FORM, Ⓒ1661-1680.
- (B) POWER AND RIGHT TO FORECLOSE; GROUNDS, Ⓒ1681-1740.
- (C) PARTIES TO FORECLOSURE; STANDING, Ⓒ1741-1770.
- (D) PROCEEDINGS IN GENERAL, Ⓒ1771-1870.
 - 1. IN GENERAL, Ⓒ1771-1820.
 - 2. JUDGMENT, ORDER, OR DECREE, Ⓒ1821-1850.
 - 3. PROCEEDINGS PRELIMINARY TO NONJUDICIAL FORECLOSURE, Ⓒ1851-1870.
- (E) RESTRAINING FORECLOSURE, Ⓒ1871-1900.
- (F) RECEIVERSHIP, Ⓒ1901-1930.
- (G) SALE, Ⓒ1931-2040.
 - 1. IN GENERAL, Ⓒ1931-1960.
 - 2. CONDUCT, TERMS, AND CONDITIONS OF SALE, Ⓒ1961-1980.
 - 3. COMPLETION OF SALE, Ⓒ1981-2000.

XIII. FORECLOSURE—Cont'd

- (G) SALE—Cont'd
 - 4. OPENING, VACATING, OR SETTING ASIDE SALE, Ⓒ2001-2030.
 - 5. RESALE, Ⓒ2031-2040.
 - (H) TITLE AND RIGHTS OF PURCHASER, Ⓒ2041-2070.
 - (I) DEFICIENCY AND PERSONAL LIABILITY, Ⓒ2071-2100.
 - (J) DISPOSITION OF PROCEEDS AND SURPLUS, Ⓒ2101-2120.
 - (K) COSTS AND FEES, Ⓒ2121-2150.
 - (L) CONCLUSIVENESS, OPERATION, AND EFFECT, Ⓒ2151-2180.
 - (M) FORECLOSURE BY ENTRY, POSSESSION, AND NOTICE, Ⓒ2181-2190.
 - (N) APPELLATE REVIEW, Ⓒ2191-2230.
- ### XIV. REDEMPTION, Ⓒ2231-2320.
- (A) IN GENERAL, Ⓒ2231-2280.
 - (B) ACTIONS AND PROCEEDINGS, Ⓒ2281-2310.
 - (C) CONCLUSIVENESS, OPERATION, AND EFFECT, Ⓒ2311-2320.
- ### XV. WRONGFUL ENFORCEMENT OR FORECLOSURE, Ⓒ2321-2350.
- ### XVI. REVERSE MORTGAGES, Ⓒ2351-2362.

I. IN GENERAL.

- 701. In general.
- 702. Constitutional and statutory provisions.
- 703. — In general.
- 704. — Purpose and construction in general.
- 705. — Validity.
 - (1). In general.
 - (2). Recording, registration, lien, and priority.
 - (3). Assignment or other transfer of parties' interests.
 - (4). Remedies and enforcement; foreclosure.
 - (5). Redemption.
 - (6). Reverse mortgages.
- 706. — Retroactive or prospective operation.
 - (1). In general.
 - (2). Recording, registration, lien, and priority.
 - (3). Assignment or other transfer of parties' interests.

266. MORTGAGES AND DEEDS OF TRUST

I. IN GENERAL.(Cont'd)

- (4). Remedies and enforcement; foreclosure.
- (5). Redemption.
- (6). Reverse mortgages.
- 707. What law governs.
- 708. Federal preemption.

II. NATURE AND REQUISITES.

(A) IN GENERAL.

- 711. In general.
- 712. Deeds of trust in general.
- 713. Security deeds in general.
- 714. Purchase money mortgages, deeds of trust, or security deeds.
- 715. Existence and necessity of debt.
- 716. — In general.
- 717. — Effect of extinguishment of debt.
- 718. Negotiability.
- 719. Evidence.
- 720. — In general; admissibility.
- 721. — Presumptions and burden of proof.
- 722. — Weight and sufficiency.
- 723. Questions of law or fact.

(B) FORMAL REQUISITES.

- 731. In general.
- 732. Form of instrument.
- 733. Necessity and sufficiency of writing in general.
- 734. Recitals.
- 735. — In general.
- 736. — As to security.
- 737. — As to consideration.
- 738. — Words of conveyance.
- 739. — Covenant or promise to pay; manner of payment or defeasance.
- 740. Execution in general.
- 741. Signature or subscription of parties.
- 742. — In general.
- 743. — Forged signatures.
- 744. Seal.
- 745. Attestation, acknowledgment, or notarization.
- 746. Affixing revenue stamps.
- 747. Affidavits accompanying instrument.
- 748. — In general.
- 749. — Consideration.
- 750. — Disbursement.

II. NATURE AND REQUISITES.(Cont'd)

- 751. — Good faith.
- 752. Partial or defective execution.
- 753. — In general.
- 754. — Execution in blank.
- 755. — Confirmation or ratification of defective instrument.
 - (1). In general.
 - (2). Forged instruments.
- 756. Delivery.
- 757. — In general.
- 758. — Recording or delivery for recording.
- 759. — Conditional delivery.
- 760. Ratification of unauthorized or defective delivery.
- 761. Acceptance of delivery.
- 762. Evidence.
- 763. — In general; admissibility.
- 764. — Presumptions and burden of proof.
- 765. — Weight and sufficiency.
- 766. Questions of law or fact.

(C) VALIDITY AND ENFORCEABILITY.

- 771. In general.
- 772. Validity of underlying obligation.
- 773. Unconscionability.
- 774. Illegality.
- 775. Capacity and assent of parties.
- 776. — In general.
- 777. — Physical or mental condition of party.
- 778. — Trustee's consent.
- 779. Mistake.
- 780. Fraud and misrepresentation.
- 781. Duress.
- 782. Undue influence.
- 783. Partial invalidity.
- 784. Ratification of voidable mortgage.
- 785. Evidence.
- 786. — In general; admissibility.
- 787. — Presumptions and burden of proof.
- 788. — Weight and sufficiency.
 - (1). In general.
 - (2). Degree of proof.
 - (3). Particular cases.
- 789. Questions of law or fact.

266. MORTGAGES AND DEEDS OF TRUST

(D) CONSIDERATION.

- 801. In general.
- 802. Sufficiency in general.
- 803. Pre-existing debt or liability; surrender or release of other security.
- 804. Compromise or settlement of disputed claim.
- 805. Failure of consideration.
- 806. Evidence.
- 807. — In general; admissibility.
- 808. — Presumptions and burden of proof.
- 809. — Weight and sufficiency.
- 810. Questions of law or fact.

(E) CHARACTERIZATION OF TRANSACTION AS MORTGAGE; EQUITABLE MORTGAGES.

- 821. In general.
- 822. Intention of parties in general.
- 823. Factors and circumstances considered in general.
- 824. Sales, deeds, and conveyances in general.
- 825. — In general.
- 826. — Absolute sales, deeds, and conveyances in general.
- 827. — Effect of other agreements in general.
- 828. — Defeasance in general.
- 829. — Particular cases.
- 830. Conditional sales, contracts for deed, and installment land contracts.
- 831. Leases.
- 832. Defective, failed, invalid, or informal mortgages.
- 833. Fraud or other inequitable conduct.
- 834. Other particular cases and transactions.
- 835. Evidence.
- 836. — In general; admissibility.
- 837. — Presumptions and burden of proof.
- 838. — Weight and sufficiency.
 - (1). In general.
 - (2). Degree of proof.
 - (3). Particular cases.
- 839. Questions of law or fact.

III. CONSTRUCTION IN GENERAL.

- 851. In general.
- 852. Intention of parties in general.
- 853. Language of instrument.
- 854. — In general.
- 855. — Construction against drafter.

III. CONSTRUCTION IN GENERAL.(Cont'd)

- 856. — Plain meaning; ambiguity.
- 857. — Conflicting clauses; general and specific provisions.
- 858. Construing instruments together.
- 859. Previous negotiations and contracts.
- 860. Extrinsic circumstances.
- 861. Evidence.
- 862. — In general; admissibility.
- 863. — Presumptions and burden of proof.
- 864. — Weight and sufficiency.
- 865. Questions of law or fact.

IV. PARTIES TO TRANSACTION.

- 871. In general.
- 872. Description of parties in general.
- 873. Parties liable.
- 874. Parties secured.
- 875. Deeds of trust and security deeds.
- 876. — In general.
- 877. — Trustees.
 - (1). In general.
 - (2). Removal; appointment of new or substitute trustee.
- 878. Loan servicers, nominees, and other agents of lenders.
- 879. Other particular parties.
- 880. Evidence.
- 881. — In general; admissibility.
- 882. — Presumptions and burden of proof.
- 883. — Weight and sufficiency.
- 884. Questions of law or fact.

V. SCOPE, OPERATION, AND EFFECT OF TRANSACTION; RIGHTS, DUTIES, AND LIABILITIES OF PARTIES.

(A) IN GENERAL.

- 891. In general.
- 892. Nature of interest conveyed or created; title or lien.
- 893. Equitable mortgages.
- 894. Deeds of trust.
- 895. Security deeds.
- 896. Time and place of taking effect.
- 897. Duration and termination in general.
- 898. Performance, breach, and default in general.
- 899. Evidence.
- 900. — In general; admissibility.

266. MORTGAGES AND DEEDS OF TRUST

V. SCOPE, OPERATION, AND EFFECT OF TRANSACTION; RIGHTS, DUTIES, AND LIABILITIES OF PARTIES.(Cont'd)

- 901. — Presumptions and burden of proof.
- 902. — Weight and sufficiency.
- 903. Questions of law or fact.

(B) DEBTS OR LIABILITIES SECURED BY TRANSACTION.

- 911. In general.
- 912. Description of debts or liabilities secured in general.
- 913. Debts owed by another.
- 914. Purchase money.
- 915. Performance of contract or obligation.
- 916. Mortgages for support.
- 917. Indemnity mortgages.
- 918. Mortgages as security; collateral mortgages.
- 919. Extension to other debts or liabilities.
- 920. — In general.
- 921. — Future advances; dragnet and cross-collateralization clauses.
- 922. Interest.
- 923. Personal liability for indebtedness secured.
- 924. — In general.
- 925. — Recourse or nonrecourse.
- 926. Evidence.
- 927. — In general; admissibility.
- 928. — Presumptions and burden of proof.
- 929. — Weight and sufficiency.
- 930. Questions of law or fact.

(C) PROPERTY SUBJECT TO OR AFFECTED BY TRANSACTION.

1. IN GENERAL.

- 941. In general.
- 942. Ownership, estate, or interest in property.
- 943. — In general.
- 944. — Vested, contingent, and future interests.
- 945. — Interests under land contracts.
- 946. Description of property.
- 947. — In general.
- 948. — Particular descriptions.
- 949. Extension to or substitution of other property.
- 950. — In general.

V. SCOPE, OPERATION, AND EFFECT OF TRANSACTION; RIGHTS, DUTIES, AND LIABILITIES OF PARTIES.(Cont'd)

- 951. — Proceeds of property.
- 952. — After-acquired property.
- 953. Acquisition of outstanding title or claim.
- 954. Evidence.
- 955. — In general; admissibility.
- 956. — Presumptions and burden of proof.
- 957. — Weight and sufficiency.
- 958. Questions of law or fact.

2. POSSESSION AND CONTROL OF PROPERTY.

- 961. In general.
- 962. Rights and duties of mortgagee.
- 963. — In general.
- 964. — After default.
- 965. Adverse possession.
- 966. Evidence.
- 967. — In general; admissibility.
- 968. — Presumptions and burden of proof.
- 969. — Weight and sufficiency.
- 970. Questions of law or fact.

3. USE AND MANAGEMENT OF PROPERTY.

- 981. In general.
- 982. Rights and duties of mortgagee.
- 983. — In general.
- 984. — After default.
- 985. Expenses, maintenance, and repairs.
- 986. Evidence.
- 987. — In general; admissibility.
- 988. — Presumptions and burden of proof.
- 989. — Weight and sufficiency.
- 990. Questions of law or fact.

4. APPURTENANCES AND IMPROVEMENTS.

- 1001. In general.
- 1002. Buildings and structures.
- 1003. Mobile or manufactured homes.
- 1004. Logs, timber, and crops.
- 1005. Evidence.
- 1006. — In general; admissibility.
- 1007. — Presumptions and burden of proof.
- 1008. — Weight and sufficiency.
- 1009. Questions of law or fact.

266. MORTGAGES AND DEEDS OF TRUST

5. INJURIES TO PROPERTY.

- 1021. In general.
- 1022. Waste.
- 1023. Trespass.
- 1024. — In general.
- 1025. — By mortgagee.
- 1026. Injuries by third parties.
- 1027. — In general.
- 1028. — Trespass.
- 1029. Evidence.
- 1030. — In general; admissibility.
- 1031. — Presumptions and burden of proof.
- 1032. — Weight and sufficiency.
- 1033. Questions of law or fact.

(D) DISBURSEMENT AND DISPOSITION OF LOAN PROCEEDS.

- 1041. In general.
- 1042. Construction loans.
- 1043. Evidence.
- 1044. — In general; admissibility.
- 1045. — Presumptions and burden of proof.
- 1046. — Weight and sufficiency.
- 1047. Questions of law or fact.

(E) PAYMENT OR PERFORMANCE OF CONDITION.

- 1051. In general.
- 1052. Particular cases, contexts, and questions in general.
- 1053. Time for payment or performance.
- 1054. — In general.
- 1055. — Acceleration.
- 1056. Wrap-around mortgages.
- 1057. Partial payments and suspense accounts.
- 1058. Payoff statements.
- 1059. Application of payments in general.
- 1060. Fees and miscellaneous charges.
- 1061. — In general.
- 1062. — Late charges or fees; default interest.
- 1063. — Payoff fees in general.
- 1064. Prepayment, defeasance, or curtailment.
- 1065. — In general.
- 1066. — Perfect tender in time rule.
- 1067. — Penalties, premiums, and defeasance fees.

V. SCOPE, OPERATION, AND EFFECT OF TRANSACTION; RIGHTS, DUTIES, AND LIABILITIES OF PARTIES.(Cont'd)

- 1068. Persons or entities to whom payment may be made.
- 1069. What constitutes payment or tender.
- 1070. — In general.
- 1071. — Coupons.
- 1072. — Bonds.
- 1073. — Checks.
- 1074. — Online payments; electronic fund transfers.
- 1075. — Setoff or offset against indebtedness.
- 1076. — Insurance payments.
- 1077. — Property transfers.
- 1078. Operation and effect of payment or tender.
- 1079. — In general.
- 1080. — Extinguishment or discharge of mortgage lien or debt.
- 1081. Conditional tender.
- 1082. Rights of third persons making or agreeing to make payment or satisfaction.
- 1083. Evidence.
- 1084. — In general; admissibility.
- 1085. — Presumptions and burden of proof.
- 1086. — Weight and sufficiency.
- 1087. Questions of law or fact.

(F) RENTS AND PROFITS.

- 1091. In general.
- 1092. Provisions of mortgage or other agreement.
- 1093. — In general.
- 1094. — Particular cases.
- 1095. After default; mortgagee in possession.
- 1096. — In general.
- 1097. — Particular cases.
- 1098. Accounting.
- 1099. Application to debt or interest.
- 1100. Rights and liabilities as between different mortgagees.
- 1101. Evidence.
- 1102. — In general; admissibility.
- 1103. — Presumptions and burden of proof.

266. MORTGAGES AND DEEDS OF TRUST

V. SCOPE, OPERATION, AND EFFECT OF TRANSACTION; RIGHTS, DUTIES, AND LIABILITIES OF PARTIES.(Cont'd)

- 1104. — Weight and sufficiency.
- 1105. Questions of law or fact.

(G) TAXES AND ASSESSMENTS.

- 1111. In general.
- 1112. Provisions of mortgage or other agreement.
- 1113. Good faith and fair dealing.
- 1114. Reimbursement of mortgagee.
- 1115. Evidence.
- 1116. — In general; admissibility.
- 1117. — Presumptions and burden of proof.
- 1118. — Weight and sufficiency.
- 1119. Questions of law or fact.

(H) INSURANCE.

- 1121. In general.
- 1122. Provisions of mortgage or other agreement.
- 1123. Good faith and fair dealing.
- 1124. Reimbursement of mortgagee.
- 1125. Evidence.
- 1126. — In general; admissibility.
- 1127. — Presumptions and burden of proof.
- 1128. — Weight and sufficiency.
- 1129. Questions of law or fact.

(I) MODIFICATION.

- 1131. In general.
- 1132. Modification agreements in general.
- 1133. Particular cases, contexts, and questions in general.
- 1134. Debt or obligation secured by transaction.
- 1135. — In general.
- 1136. — Amount.
- 1137. — Time or mode of payment.
- 1138. — Renewal of note or obligation.
- 1139. Property subject to or affected by transaction.
- 1140. — In general.
- 1141. — Adding, subtracting, or substituting property.
- 1142. Refinancing.
- 1143. Forbearance.

V. SCOPE, OPERATION, AND EFFECT OF TRANSACTION; RIGHTS, DUTIES, AND LIABILITIES OF PARTIES.(Cont'd)

- 1144. Loss mitigation; duty to pursue foreclosure alternatives.
- 1145. Dual-tracking.
- 1146. Federal regulation.
- 1147. Evidence.
- 1148. — In general; admissibility.
- 1149. — Presumptions and burden of proof.
- 1150. — Weight and sufficiency.
- 1151. Questions of law or fact.

(J) RELEASE, CANCELLATION, DISCHARGE, AND SATISFACTION.

- 1161. In general.
- 1162. Authority to grant, provide, or accept.
- 1163. Form and requisites.
- 1164. — In general.
- 1165. — Consideration.
- 1166. — Reconveyance.
- 1167. Validity and enforceability.
- 1168. Partial release.
- 1169. Execution, delivery, and entry of record.
- 1170. Construction, operation, and effect.
- 1171. — In general.
- 1172. — Partial release.
- 1173. Reinstatement of mortgage.
- 1174. Reissue of note or mortgage.
- 1175. Evidence.
- 1176. — In general; admissibility.
- 1177. — Presumptions and burden of proof.
- 1178. — Weight and sufficiency.
- 1179. Questions of law or fact.

(K) OTHER TRANSACTIONS AND DEALINGS BETWEEN PARTIES.

- 1181. In general.
- 1182. Rescission.
- 1183. Negligence.
- 1184. Fraud and misrepresentation.
- 1185. Conversion and civil theft.
- 1186. Evidence.
- 1187. — In general; admissibility.
- 1188. — Presumptions and burden of proof.

266. MORTGAGES AND DEEDS OF TRUST

V. SCOPE, OPERATION, AND EFFECT OF TRANSACTION; RIGHTS, DUTIES, AND LIABILITIES OF PARTIES.(Cont'd)

- 1189. — Weight and sufficiency.
- 1190. Questions of law or fact.

(L) RIGHTS, DUTIES, AND LIABILITIES OF TRUSTEES.

- 1201. In general.
- 1202. Parties to whom duties are owed.
- 1203. Conduct and misconduct; negligence.
- 1204. — In general.
- 1205. — Particular cases.
- 1206. Good faith, bad faith, and gross negligence.
- 1207. Fees and expenses.
- 1208. Liability of lender or other beneficiary for acts of trustee.
- 1209. Evidence.
- 1210. — In general; admissibility.
- 1211. — Presumptions and burden of proof.
- 1212. — Weight and sufficiency.
- 1213. Questions of law or fact.

(M) RIGHTS, DUTIES, AND LIABILITIES OF LOAN SERVICERS, NOMINEES, AND OTHER AGENTS OF LENDERS.

- 1221. In general.
- 1222. Parties to whom duties are owed.
- 1223. Conduct and misconduct; negligence.
- 1224. — In general.
- 1225. — Particular cases.
- 1226. Good faith, bad faith, and gross negligence.
- 1227. Fees and expenses.
- 1228. Liability of lender for acts of agent.
- 1229. Evidence.
- 1230. — In general; admissibility.
- 1231. — Presumptions and burden of proof.
- 1232. — Weight and sufficiency.
- 1233. Questions of law or fact.

(N) FIDUCIARY DUTIES.

- 1241. In general.
- 1242. Lenders and mortgagees in general.
- 1243. Deeds of trust and security deeds.
- 1244. — In general.
- 1245. — Lenders; beneficiaries.
- 1246. — Trustees.

V. SCOPE, OPERATION, AND EFFECT OF TRANSACTION; RIGHTS, DUTIES, AND LIABILITIES OF PARTIES.(Cont'd)

- 1247. Loan servicers, nominees, and other agents of lenders.
- 1248. Evidence.
- 1249. — In general; admissibility.
- 1250. — Presumptions and burden of proof.
- 1251. — Weight and sufficiency.
- 1252. Questions of law or fact.

VI. LIEN.

- 1261. In general; nature, creation, and existence.
- 1262. Commencement and duration.
- 1263. Scope and extent.
- 1264. Termination.
- 1265. — In general.
- 1266. — Waiver or abandonment.
- 1267. Renewal or restoration.
- 1268. Evidence.
- 1269. — In general; admissibility.
- 1270. — Presumptions and burden of proof.
- 1271. — Weight and sufficiency.
- 1272. Questions of law or fact.

VII. RECORDING AND REGISTRATION.

- 1281. In general.
- 1282. Necessity and effect as between parties to transaction.
- 1283. — In general.
- 1284. — Effect of failure to record as between parties to transaction.
- 1285. Instruments or documents subject to recording or registration.
- 1286. — In general.
- 1287. — Transactions characterized as mortgages; equitable mortgages.
- 1288. Place.
- 1289. Time.
- 1290. Fees.
- 1291. Sufficiency.
- 1292. Renewal or reinscription.
- 1293. Evidence.
- 1294. — In general; admissibility.
- 1295. — Presumptions and burden of proof.

266. MORTGAGES AND DEEDS OF TRUST

VII. RECORDING AND REGISTRATION.(Cont'd)

- 1296. — Weight and sufficiency.
- 1297. Questions of law or fact.

VIII. RIGHTS AND CLAIMS OF NONPARTIES; PRIORITY.

(A) IN GENERAL.

- 1301. In general.
- 1302. Record and notice, effect on nonparties in general.
- 1303. Failure to record, effect on nonparties in general.
- 1304. Mortgagee as good-faith purchaser in general.
- 1305. Actual notice.
- 1306. Constructive or inquiry notice.
- 1307. Possession as notice.
- 1308. Defective instruments or instruments not entitled to be recorded.
- 1309. Transactions characterized as mortgages; equitable mortgages.
- 1310. Evidence.
- 1311. — In general; admissibility.
- 1312. — Presumptions and burden of proof.
- 1313. — Weight and sufficiency.
- 1314. Questions of law or fact.

(B) PARTICULAR COMPETING CLAIMS AND LIENS, PRIORITIES CONCERNING.

- 1321. In general.
- 1322. Debts or obligations secured by same mortgage or deed.
- 1323. Multiple mortgages, deeds of trust, or security deeds.
- 1324. — In general.
- 1325. — Record and notice of mortgage.
 - (1). In general.
 - (2). Instruments recorded at same time.
- 1326. Judicial proceedings.
- 1327. — In general.
- 1328. — Record and notice of mortgage.
- 1329. Building and construction; mechanics' liens.
- 1330. — In general.
- 1331. — Record and notice of mortgage.
- 1332. Minerals; oil and gas.
- 1333. Vendor and purchaser.

VIII. RIGHTS AND CLAIMS OF NONPARTIES; PRIORITY.(Cont'd)

- 1334. Landlord and tenant; lessor and lessee.
- 1335. Condominium; common interest communities.
- 1336. Heirs and survivors.
- 1337. Government claims and liens.
- 1338. — In general.
- 1339. — Tax claims and liens.
- 1340. Evidence.
- 1341. — In general; admissibility.
- 1342. — Presumptions and burden of proof.
- 1343. — Weight and sufficiency.
- 1344. Questions of law or fact.

(C) PURCHASE MONEY MORTGAGES, PRIORITIES CONCERNING.

- 1351. In general.
- 1352. Particular liens and claims.
- 1353. Evidence.
- 1354. — In general; admissibility.
- 1355. — Presumptions and burden of proof.
- 1356. — Weight and sufficiency.
- 1357. Questions of law or fact.

(D) AGREEMENTS AS TO PRIORITY.

- 1361. In general.
- 1362. Subordination agreements.
- 1363. Effect on nonparties.
- 1364. Evidence.
- 1365. — In general; admissibility.
- 1366. — Presumptions and burden of proof.
- 1367. — Weight and sufficiency.
- 1368. Questions of law or fact.

(E) EFFECT OF SUBSEQUENT CIRCUMSTANCES AND TRANSACTIONS.

- 1371. In general.
- 1372. Modification of loan or mortgage in general.
- 1373. Subsequent or future advances.
- 1374. Consolidation of mortgages or loans.
- 1375. Renewals or extensions.
- 1376. Refinancing, satisfaction, release, or discharge of mortgage.
- 1377. Assignment of mortgage to mortgagor.

266. MORTGAGES AND DEEDS OF TRUST

VIII. RIGHTS AND CLAIMS OF NONPARTIES; PRIORITY.(Cont'd)

- 1378. Conveyance of mortgaged property to mortgagee.
- 1379. Evidence.
- 1380. — In general; admissibility.
- 1381. — Presumptions and burden of proof.
- 1382. — Weight and sufficiency.
- 1383. Questions of law or fact.

(F) EFFECT OF PARTIES' CONDUCT OR MISCONDUCT.

- 1391. In general.
- 1392. Negligence.
- 1393. Fraud and misrepresentation.
- 1394. Waiver, estoppel, and consent.
- 1395. Evidence.
- 1396. — In general; admissibility.
- 1397. — Presumptions and burden of proof.
- 1398. — Weight and sufficiency.
- 1399. Questions of law or fact.

IX. ASSIGNMENT OR OTHER TRANSFER OF MORTGAGEE'S INTEREST.

(A) IN GENERAL.

- 1401. In general.
- 1402. Assignability or transferability.
- 1403. Form and requisites.
- 1404. — In general.
- 1405. — Particular transfers in general.
- 1406. — Delivery.
- 1407. — Acknowledgment.
- 1408. — Indorsement.
- 1409. Validity and enforceability.
- 1410. Necessity of writing.
- 1411. Necessity of transferring both mortgage and note.
- 1412. — In general.
- 1413. — Bifurcation of mortgage and note.
- 1414. — Mortgage as following note; note as following mortgage.
- 1415. — Effect of failure to transfer both.
- 1416. Consideration.
- 1417. Parties to transfer.
- 1418. — In general.
- 1419. — Who may make transfer.
- 1420. — Who may receive transfer.
- 1421. Notice to or consent of mortgagor.

IX. ASSIGNMENT OR OTHER TRANSFER OF MORTGAGEE'S INTEREST.(Cont'd)

- 1422. Recording and registration.
- 1423. — In general.
- 1424. — Necessity.
- 1425. — Mode and sufficiency.

(B) CONSTRUCTION, OPERATION, AND EFFECT OF TRANSFER.

- 1431. In general.
- 1432. Particular transfers in general.
- 1433. Title and rights transferred.
- 1434. Equities and defenses between original parties, transfer as subject to.
- 1435. — In general.
- 1436. — Bona fide transferees of mortgage.
- 1437. — Bona fide purchasers of negotiable instruments secured by mortgage.
- 1438. Equities in favor of third persons, transfer as subject to.
- 1439. Rights and liabilities of transferor.
- 1440. Rights of transferee.
- 1441. — In general.
- 1442. — As to property mortgaged.
- 1443. — As to debt or obligation secured.
- 1444. — As against transferor.
 - (1). In general.
 - (2). Right of recourse in general.
 - (3). Covenants and warranties in general.
 - (4). Implied covenants and warranties.
- 1445. — As against third persons.
- 1446. Liabilities of transferee.
- 1447. — In general.
- 1448. — Acts, practices, or conduct of transferor.
- 1449. Payment or release of debt.
- 1450. — In general.
- 1451. — Payment to mortgagee after transfer.
- 1452. Release, cancellation, discharge, or satisfaction of mortgage after transfer.
- 1453. Priorities.
- 1454. — In general.
- 1455. — Priority of record.
- 1456. — Effect of failure to record.

266. MORTGAGES AND DEEDS OF TRUST

(C) TRANSFER OF PART OF DEBT.

- 1461. In general.
- 1462. Construction, operation, and effect.

(D) TRANSFERS INVOLVING SERVICING RIGHTS, PARTICIPATION ARRANGEMENTS, POOLING, OR SECURITIZATION.

- 1471. In general.
- 1472. Form and requisites.
- 1473. Validity and enforceability.
- 1474. Consideration.
- 1475. Parties to transfer.
- 1476. Notice to or consent of mortgagor.
- 1477. Recording and registration.
- 1478. Construction, operation, and effect of transfer.
- 1479. — In general.
- 1480. — Participation arrangements.
- 1481. — Pooling and securitization.

(E) RETRANSFER.

- 1491. In general.
- 1492. Reassignment.
- 1493. Rights and liabilities of subsequent or remote transferees.

(F) EQUITABLE TRANSFER.

- 1501. In general.
- 1502. Equitable assignment.

(G) TRANSFER TO MORTGAGOR OR PROPERTY OWNER.

- 1511. In general.
- 1512. Merger, confusion, and extinguishment.
- 1513. Reissue or reassignment.

(H) EVIDENCE.

- 1521. In general; admissibility.
- 1522. Presumptions and burden of proof.
- 1523. Weight and sufficiency.

(I) QUESTIONS OF LAW OR FACT.

- 1531. In general.

X. ASSIGNMENT OR OTHER TRANSFER OF MORTGAGOR'S INTEREST.

(A) IN GENERAL.

- 1541. In general.
- 1542. Right to sell or convey in general.
- 1543. Notice to or consent of mortgagee.

X. ASSIGNMENT OR OTHER TRANSFER OF MORTGAGOR'S INTEREST. (Cont'd)

- 1544. Liabilities of mortgagor on transfer.
- 1545. Due-on-sale clauses.
- 1546. Short sales.

(B) RIGHTS AND LIABILITIES OF TRANSFeree.

- 1551. In general.
- 1552. Title.
- 1553. Conveyance as subject to mortgage.
- 1554. Right to contest mortgage.
- 1555. Liabilities of transferee.
- 1556. — In general.
- 1557. — To mortgagor.
- 1558. — For mortgage debt.
- 1559. Subsequent or remote transferees.

(C) ASSUMPTION OF MORTGAGE DEBT BY TRANSFeree.

- 1561. In general.
- 1562. Assumption agreements.
- 1563. — In general.
- 1564. — Form and requisites.
- 1565. — Consideration.
- 1566. — Validity and enforceability.
- 1567. — Construction in general.
- 1568. Operation and effect of assumption.
- 1569. — In general.
- 1570. — Personal liability of transferee.
- 1571. — Transferee as principal; mortgagor as surety.
- 1572. — Release or discharge of mortgagor.
- 1573. — Effect of extension of time or other modification.
- 1574. Mutual rights and liabilities of mortgagor and transferee.
- 1575. — In general.
- 1576. — Release of transferee by mortgagor.

(D) TRANSFER OF PART OF PROPERTY MORTGAGED.

- 1581. In general.
- 1582. Apportionment of mortgage.
- 1583. Subjection of separate portions to mortgage.
- 1584. Subjection to mortgage in inverse order of alienation.

266. MORTGAGES AND DEEDS OF TRUST

(E) TRANSFER TO MORTGAGEE.

- 1591. In general.
- 1592. Deeds in lieu of foreclosure in general.
- 1593. Merger, confusion, and extinguishment.
- 1594. — In general.
- 1595. — Intent of parties.
- 1596. — Existence of other liens.

(F) EVIDENCE.

- 1601. In general; admissibility.
- 1602. Presumptions and burden of proof.
- 1603. Weight and sufficiency.

(G) QUESTIONS OF LAW OR FACT.

- 1611. In general.

XI. REMEDIES AND ENFORCEMENT IN GENERAL.

- 1621. In general.
- 1622. Lender or mortgagee, remedies of and enforcement by.
- 1623. — In general.
- 1624. — Exclusive, concurrent, and conflicting remedies; election.
 - (1). In general.
 - (2). Foreclosure and other remedies.
 - (3). Multiple foreclosure remedies.
 - (4). "One action" and "security first" rules.
- 1625. Borrower or mortgagor, remedies of and enforcement by.
- 1626. — In general.
- 1627. — Exclusive, concurrent, and conflicting remedies; election.
- 1628. Other particular parties, remedies of and enforcement by.
- 1629. — In general.
- 1630. — Trustees.
- 1631. — Transferees of mortgagee's interest.
- 1632. — Transferees of mortgagor's interest.
- 1633. — Purchasers at foreclosure sales.
- 1634. Waiver, estoppel, and consent.
- 1635. Compromise, settlement, and release.

XII. ACTIONS AND PROCEEDINGS IN GENERAL.

- 1641. In general.
- 1642. Conditions precedent.

XII. ACTIONS AND PROCEEDINGS IN GENERAL.(Cont'd)

- 1643. Jurisdiction and venue.
- 1644. Time for proceedings; limitations and laches.
- 1645. Persons entitled to sue; standing; parties.
- 1646. Pleading.
- 1647. Evidence in general.
- 1648. — In general; admissibility.
- 1649. — Presumptions and burden of proof.
- 1650. — Weight and sufficiency.
- 1651. Trial or hearing.
- 1652. — In general.
- 1653. — Questions of law or fact in general.
- 1654. — Instructions.
- 1655. — Verdict, findings, and conclusions.
- 1656. Damages or other relief.
- 1657. Judgment, order, or decree.
- 1658. Costs and fees.

XIII. FORECLOSURE.

(A) IN GENERAL; NATURE, PURPOSE, AND FORM.

- 1661. In general.
- 1662. Judicial foreclosure.
- 1663. — In general.
- 1664. — Foreclosure by action in general.
- 1665. — Law or equity; hybrid nature.
- 1666. — In personam or in rem.
- 1667. — Scire facias sur mortgage.
- 1668. — Proceedings by rule nisi and judgment thereon or for summary foreclosure.
- 1669. — Executory process.
- 1670. Nonjudicial foreclosure.
- 1671. — In general.
- 1672. — Foreclosure by exercise of power of sale.
- 1673. — Foreclosure by advertisement.
- 1674. Strict foreclosure.

(B) POWER AND RIGHT TO FORECLOSE; GROUNDS.

- 1681. In general.
- 1682. Judicial foreclosure in general.
- 1683. Nonjudicial foreclosure in general.
- 1684. — In general.

266. MORTGAGES AND DEEDS OF TRUST

XIII. FORECLOSURE.(Cont'd)

- 1685. — Existence and validity of power of sale.
- 1686. — Revocation or suspension of power of sale.
- 1687. Maturity of debt secured.
- 1688. Default or breach of condition.
- 1689. — In general.
- 1690. — Particular obligations and conditions in general.
- 1691. — Default in payment in general.
- 1692. — Effect of extension of time for payment.
- 1693. — Installments.
- 1694. — Fees and charges.
- 1695. — Interest.
- 1696. — Rent, taxes, and assessments.
- 1697. — Insurance.
- 1698. — Different obligations secured by same mortgage; dragnet clauses.
- 1699. — Granting additional liens or encumbrances on mortgaged property.
- 1700. — Acceleration.
 - (1). In general.
 - (2). Election to accelerate.
 - (3). Defaults triggering acceleration.
 - (4). Validity.
 - (5). Tender of payment after acceleration.
 - (6). Abandonment of acceleration; deacceleration.
- 1701. Defenses to foreclosure.
- 1702. — In general.
- 1703. — Stipulations against forfeiture or foreclosure.
- 1704. — Failure of consideration.
- 1705. — Substantial performance; payment.
- 1706. — Good faith and fair dealing.
- 1707. — Existence of land patent.
- 1708. — Equity.
- 1709. — Release or discharge.
- 1710. — Recoupment, set-off, or counterclaim.
- 1711. — Purchase money mortgages.
- 1712. Reinstatement; curing default.
- 1713. Conditions precedent.
- 1714. — In general.
- 1715. — Ownership of mortgage.

XIII. FORECLOSURE.(Cont'd)

- 1716. — Recording of mortgage or assignment.
- 1717. — Holding, producing, or presenting loan documents.
- 1718. — Investigation as to legality of foreclosure.
- 1719. Required notices.
- 1720. — In general.
- 1721. — Default.
- 1722. — Intent to foreclose.
- 1723. — Acceleration, reinstatement, and curing default.
- 1724. Service of required notices.
- 1725. Duty to pursue foreclosure alternatives.
- 1726. Alternative dispute resolution; mediation.
- 1727. — In general.
- 1728. — Judicial review.
- 1729. — Sanctions for failure to comply.
- 1730. Settlement or foreclosure conferences.
- 1731. — In general.
- 1732. — Sanctions.
- 1733. Compelling foreclosure.
- 1734. Rights of junior lienholders.
- 1735. Successive foreclosures.
- 1736. Waiver, estoppel, and consent.

(C) PARTIES TO FORECLOSURE; STANDING.

- 1741. In general.
- 1742. Persons entitled to foreclose; plaintiffs.
- 1743. — In general.
- 1744. — Lenders and mortgagees in general.
- 1745. — Parties to deeds of trust and security deeds.
 - (1). In general.
 - (2). Lenders; beneficiaries.
 - (3). Trustees.
- 1746. — Loan servicers, nominees, and other agents of lenders.
- 1747. — Attorneys or attorneys-in-fact.
- 1748. — Assignees and other transferees.
- 1749. — Holders of obligations secured and their agents; non-holders in possession.
- 1750. — Holders of lost instruments.
- 1751. Persons as to whom mortgage may be foreclosed; defendants.
- 1752. Necessary or indispensable parties.

266. MORTGAGES AND DEEDS OF TRUST

XIII. FORECLOSURE.(Cont'd)

- 1753. — In general.
- 1754. — Lenders and mortgagees in general.
- 1755. — Parties to deeds of trust and security deeds.
 - (1). In general.
 - (2). Lenders; beneficiaries.
 - (3). Trustees.
- 1756. — Loan servicers, nominees, and other agents of lenders.
- 1757. — Assignees and other transferees.
 - (1). In general.
 - (2). Tax-sale purchasers.
- 1758. — Tenants.
- 1759. — Heirs and survivors.
- 1760. — Other lenders, mortgagees, and lienholders.
- 1761. Bringing in new parties.
- 1762. — In general.
- 1763. — Third-party defendants.
- 1764. Intervention.
- 1765. Substitution of parties.
- 1766. Defects, objections, and amendment as to parties.

(D) PROCEEDINGS IN GENERAL.

1. IN GENERAL.

- 1771. In general.
- 1772. Abatement or stay on death of party.
- 1773. Jurisdiction.
- 1774. — In general.
- 1775. — Subject-matter jurisdiction.
- 1776. — Personal jurisdiction.
- 1777. Venue.
- 1778. Time for proceedings; limitations and laches.
- 1779. Process.
- 1780. — In general.
- 1781. — Mode and sufficiency of service.
- 1782. Pleading.
- 1783. — In general.
- 1784. — Complaint or other initial pleading.
 - (1). In general.
 - (2). Particular cases.
- 1785. — Answer or other responsive pleading.
 - (1). In general.

XIII. FORECLOSURE.(Cont'd)

- (2). Particular cases.
- 1786. — Subsequent pleadings.
 - (1). In general.
 - (2). Particular cases.
- 1787. — Amended and supplemental pleadings.
 - (1). In general.
 - (2). Particular cases.
- 1788. — Variance between pleadings and proof.
 - (1). In general.
 - (2). Particular cases.
- 1789. Evidence in general.
- 1790. — In general; admissibility.
- 1791. — Presumptions and burden of proof.
- 1792. — Weight and sufficiency.
- 1793. Trial or hearing in general.
- 1794. Scope of inquiry and powers of court.
- 1795. Stay or continuance.
- 1796. Consolidation or severance.
- 1797. Dismissal or nonsuit.
- 1798. — In general; grounds.
- 1799. — Voluntary dismissal.
- 1800. — Effect of dismissal.
- 1801. Reference.
- 1802. — In general.
- 1803. — Proceedings to obtain.
- 1804. — Proceedings on reference.
- 1805. — Review or supervision by trial court.
- 1806. Questions of law or fact in general.
- 1807. Instructions.
- 1808. Verdict, findings, and conclusions.
- 1809. New trial or rehearing.

2. JUDGMENT, ORDER, OR DECREE.

- 1821. In general.
- 1822. Nature and essentials in general.
- 1823. Interlocutory or final.
- 1824. Scope and extent of relief granted.
- 1825. — In general.
- 1826. — Sale of property.
- 1827. — Amount of indebtedness.
- 1828. — Prepayment penalties.
- 1829. — Reimbursement of payments for taxes or insurance.

266. MORTGAGES AND DEEDS OF TRUST

XIII. FORECLOSURE.(Cont'd)

- 1830. — Rights of and relief to defendants in general.
- 1831. — Other encumbrances.
- 1832. Rendition and entry.
- 1833. Form and requisites.
- 1834. Amendment or modification.
- 1835. Opening, vacating, or setting aside.
- 1836. — In general.
- 1837. — Grounds.
- 1838. — Proceedings.
- 1839. Assignment.
- 1840. Execution and enforcement.
- 1841. — In general.
- 1842. — Stay or other relief from enforcement.

3. PROCEEDINGS PRELIMINARY TO NONJUDICIAL FORECLOSURE.

- 1851. In general.
- 1852. Notice and hearing.
- 1853. Proceedings before clerk of court.
- 1854. Public trustee foreclosure proceedings.
- 1855. Dismissal.
- 1856. Judgment, order, or decree.
- 1857. Transfer of proceedings to court.
- 1858. — In general.
- 1859. — Scope and standard of review.
- 1860. Conversion to judicial foreclosure action.

(E) RESTRAINING FORECLOSURE.

- 1871. In general.
- 1872. Judicial foreclosure in general.
- 1873. Nonjudicial foreclosure in general.
- 1874. Injunction.
- 1875. — In general.
- 1876. — Permanent injunction.
- 1877. — Preliminary injunction.
- 1878. Temporary restraining order.
- 1879. Moratorium laws.
- 1880. — In general.
- 1881. — Mortgages and property within moratorium statute.
- 1882. — Equity of mortgagor in property, and prospects for redemption or refinancing.
- 1883. — Application of income from premises.
 - (1). In general.

XIII. FORECLOSURE.(Cont'd)

- (2). Expenses and charges deductible from income, and basis of accounting.
- (3). Proceedings to compel application of income.
- 1884. Proceedings to restrain foreclosure.
- 1885. — In general.
- 1886. — Jurisdiction and venue.
- 1887. — Time for proceedings; limitations and laches.
- 1888. — Mootness.
- 1889. — Persons entitled; standing; parties.
- 1890. — Pleading.
- 1891. — Evidence in general.
- 1892. — Trial or hearing.
 - (1). In general.
 - (2). Questions of law or fact in general.
 - (3). Instructions.
 - (4). Verdict, findings, and conclusions.
- 1893. — Judgment, order, or decree.
- 1894. Continuing, modifying, or terminating restraint.
- 1895. Stay of restraint.

(F) RECEIVERSHIP.

- 1901. In general.
- 1902. Appointment of receiver.
- 1903. — In general.
- 1904. — Discretion of court.
- 1905. — Provisions for receiver in mortgage, deed of trust, or security deed.
- 1906. Grounds.
- 1907. — In general.
- 1908. — Inadequacy of security in general.
- 1909. — Inadequacy of security in connection with other circumstances.
- 1910. Proceedings for appointment of receiver.
- 1911. — In general.
- 1912. — Ex parte appointment.
- 1913. Bonds for receivership.
- 1914. Operation and effect of appointment of receiver.
- 1915. Receivership after sale.
- 1916. Rights, powers, duties, and liabilities of receiver.
- 1917. — In general.

266. MORTGAGES AND DEEDS OF TRUST

XIII. FORECLOSURE.(Cont'd)

- 1918. — Duration and extension of receivership to other foreclosures.
- 1919. — Management and disposition of property and proceeds by receiver.
- 1920. — Proceedings by or against receiver.
- 1921. — Confirmation of receiver's sale of property.
- 1922. — Accounting, compensation, and discharge of receiver.
- 1923. Removal of receiver.

(G) SALE.

1. IN GENERAL.

- 1931. In general.
- 1932. Time for exercise of power of sale.
- 1933. Bond for sale.
- 1934. Appraisal.
- 1935. — In general.
- 1936. — Notice.
- 1937. — Appraisers.
- 1938. — Manner, form, and requisites.
- 1939. — Defects and objections; opening or vacating.
- 1940. — Reappraisal.
- 1941. Certificate as to encumbrances.
- 1942. Persons who may sell; authority and powers.
- 1943. Notice of sale.
- 1944. — In general.
- 1945. — Form, requisites, and sufficiency.
- 1946. — Time for notice.
- 1947. — Persons entitled to notice.
- 1948. — Method of service.
 - (1). In general.
 - (2). Personal service.
 - (3). Mail.
 - (4). Publication or other constructive notice; advertisements.
 - (5). Electronic methods.
- 1949. — Return and proof.
- 1950. Place of sale.
- 1951. Time of sale.
- 1952. — In general.
- 1953. — Postponement, continuation, adjournment, or rescheduling of sale.
 - (1). In general.

XIII. FORECLOSURE.(Cont'd)

- (2). Notice.
- 1954. Cancellation of sale.
- 2. CONDUCT, TERMS, AND CONDITIONS OF SALE.**
 - 1961. In general.
 - 1962. Price.
 - 1963. Sale in parcels or in gross.
 - 1964. — In general.
 - 1965. — Order of offering for sale.
 - 1966. Persons who may purchase.
 - 1967. Bids.
 - 1968. — In general.
 - 1969. — Payment of bid.
 - 1970. — Failure to comply with bid.
 - (1). In general; grounds.
 - (2). Effect of noncompliance; liabilities of bidders.
 - (3). Enforcement of bid.
- 3. COMPLETION OF SALE.**
 - 1981. In general.
 - 1982. Affidavits and record of sale.
 - 1983. Report or return.
 - 1984. Confirmation of sale.
 - 1985. — In general.
 - 1986. — Necessity.
 - 1987. — Authority and discretion of court in general.
 - 1988. — Persons entitled to seek or challenge confirmation; standing; parties.
 - 1989. — Grounds and objections.
 - (1). In general.
 - (2). Appraisal.
 - (3). Notice.
 - (4). Conduct of sale.
 - (5). Adequacy of price.
 - 1990. — Proceedings.
 - (1). In general.
 - (2). Jurisdiction and venue.
 - (3). Time for proceedings; limitations and laches.
 - (4). Pleading or other mode of presentation.
 - (5). Evidence in general.
 - (6). Trial or hearing.
 - (7). Judgment, order, or decree.

266. MORTGAGES AND DEEDS OF TRUST

XIII. FORECLOSURE.(Cont'd)

(8). Opening, vacating, or setting aside confirmation.

1991. Certificate of sale or certificate of purchase.

4. OPENING, VACATING, OR SETTING ASIDE SALE.

2001. In general.

2002. Authority and discretion of court in general.

2003. Persons entitled to challenge or defend sale; standing; parties.

2004. Grounds.

2005. — In general.

2006. — Appraisal.

2007. — Notice.

2008. — Conduct of sale.

2009. — Adequacy of price.

2010. Proceedings.

2011. — In general.

2012. — Form of remedy and conditions precedent.

2013. — Jurisdiction and venue.

2014. — Time for proceedings; limitations and laches.

2015. — Process or other notice.

2016. — Pleading or other mode of presentation.

2017. — Evidence in general.

2018. — Trial or hearing.

2019. — Judgment, order, or decree.

5. RESALE.

2031. In general.

2032. Upon failure to comply with bid.

2033. Upon denial of confirmation.

2034. Upon opening, vacating, or setting aside of sale.

(H) TITLE AND RIGHTS OF PURCHASER.

2041. In general.

2042. Nature and extent of rights acquired.

2043. — In general.

2044. — Time as of which rights vest in purchaser.

2045. — Rents and profits.

(1). In general.

(2). During redemption period.

2046. — Logs, timber, and crops.

XIII. FORECLOSURE.(Cont'd)

2047. — Liens and encumbrances.

(1). In general.

(2). Judgments.

(3). Other mortgages or deeds of trust.

(4). Taxes and insurance.

2048. — Leases.

2049. — Easements.

2050. — Bona fide purchasers.

2051. — Relief of purchaser against defects in title or property.

2052. Possession and recovery thereof.

2053. — In general.

2054. — During redemption period.

2055. — Remedies and proceedings.

(1). In general.

(2). Ejectment.

(3). Writ of assistance.

(4). Writ of possession.

(5). Forcible or unlawful detainer.

(6). Summary proceedings.

2056. Liabilities of purchasers.

2057. — In general.

2058. — As to application of proceeds.

2059. Rights and liabilities of subsequent purchasers or transferees.

2060. Conveyance to purchaser.

2061. — In general.

2062. — Recitals and reliance thereon.

2063. — Cancellation; void or voidable nature.

2064. — Correction of errors.

(I) DEFICIENCY AND PERSONAL LIABILITY.

2071. In general.

2072. Right to deficiency and grounds therefor.

2073. — In general.

2074. — Discretion of court in general.

2075. — Anti-deficiency laws.

2076. — Non-recourse loans.

2077. Defenses.

2078. — In general.

2079. — Bad faith; fraud.

2080. — Recoupment, set-off, or counterclaim.

2081. Actions and proceedings.

2082. — In general.

2083. — Conditions precedent.

266. MORTGAGES AND DEEDS OF TRUST

XIII. FORECLOSURE.(Cont'd)

- 2084. — Jurisdiction and venue.
- 2085. — Time for proceedings; limitations and laches.
- 2086. — Persons entitled to sue; standing; parties.
- 2087. — Pleading.
- 2088. — Process or other notice.
- 2089. — Evidence in general.
- 2090. — Trial or hearing.
 - (1). In general.
 - (2). Questions of law or fact in general.
 - (3). Instructions.
 - (4). Verdict, findings, and conclusions.
- 2091. — Relief; amount of recovery.
- 2092. — New trial or rehearing.
- 2093. — Judgment, order, or decree.
 - (1). In general.
 - (2). Form and requisites.
 - (3). Amendment or modification.
 - (4). Opening, vacating, or setting aside.
- 2094. — Execution and enforcement.

(J) DISPOSITION OF PROCEEDS AND SURPLUS.

- 2101. In general.
- 2102. Prior liens and encumbrances.
- 2103. Application to mortgage debt.
- 2104. Debts or obligations secured by same mortgage.
- 2105. Taxes and insurance.
- 2106. Right to surplus.
- 2107. — In general.
- 2108. — Junior liens and encumbrances.
- 2109. — Proceedings for distribution.

(K) COSTS AND FEES.

- 2121. In general.
- 2122. Costs of action.
- 2123. Expenses of foreclosure and sale.
- 2124. — In general.
- 2125. — Fees of officials.
- 2126. — Taxes.
- 2127. — Environmental reports and assessments.
- 2128. Attorney fees.
- 2129. — In general.
- 2130. — Persons entitled.

XIII. FORECLOSURE.(Cont'd)

- 2131. — Grounds.
 - (1). In general.
 - (2). Prevailing parties.
 - (3). Stipulation or contract.
- 2132. — Items and services compensable.
 - (1). In general.
 - (2). Paralegal fees.
- 2133. — Amount and computation.
- 2134. Proceedings to impose.
- 2135. — In general.
- 2136. — Time for proceedings; limitations and laches.
- 2137. — Process or other notice.
- 2138. — Pleading; motion.
- 2139. — Evidence in general.
- 2140. — Trial or hearing.
 - (1). In general.
 - (2). Questions of law or fact in general.
 - (3). Instructions.
 - (4). Verdict, findings, and conclusions.
- 2141. — Judgment, order, or decree.

(L) CONCLUSIVENESS, OPERATION, AND EFFECT.

- 2151. In general.
- 2152. Of defects and irregularities in foreclosure process.
- 2153. Of foreclosure sale.
- 2154. — In general.
- 2155. — Defects and irregularities.
- 2156. — Effect of opening, vacation, or setting aside of sale.
- 2157. Of judgment, order, or decree in foreclosure proceedings.
- 2158. — In general.
- 2159. — Proceedings preliminary to nonjudicial foreclosure.
- 2160. — Proceedings restraining foreclosure.
- 2161. — Proceedings for deficiency.
- 2162. — Effect of modification, vacation, or reversal.
- 2163. — Collateral attack.
- 2164. Persons concluded or affected.
- 2165. — In general.
- 2166. — Assignees and other transferees.
- 2167. Matters concluded or affected.
- 2168. — In general.

266. MORTGAGES AND DEEDS OF TRUST

XIII. FORECLOSURE.(Cont'd)

- 2169. — Satisfaction of debt.
- 2170. — Satisfaction of lien.
- 2171. — Bar of subsequent foreclosure.
- 2172. — Title to subject property.
- 2173. Rights and remedies of prior lienholders.
- 2174. Rights and remedies of junior lienholders.

(M) FORECLOSURE BY ENTRY, POSSESSION, AND NOTICE.

- 2181. In general.
- 2182. Right to foreclosure.
- 2183. Entry.
- 2184. Advertisement or other notice.
- 2185. Possession and duration thereof.
- 2186. Proceedings.
- 2187. Conclusiveness, operation, and effect.

(N) APPELLATE REVIEW.

- 2191. In general.
- 2192. Appellate jurisdiction.
- 2193. Decisions reviewable.
- 2194. — In general.
- 2195. — Finality.
- 2196. Right of review; standing; parties.
- 2197. Preservation or presentation of error in lower court; plain or fundamental error.
- 2198. Taking and perfecting appeal.
- 2199. — In general.
- 2200. — Certification of order as final.
- 2201. Briefs; statements of errors or issues.
- 2202. Record.
- 2203. Effect of appeal.
- 2204. — In general.
- 2205. — Stay pending appeal.
- 2206. — Supersedeas bonds.
- 2207. Hearing.
- 2208. Dismissal, withdrawal, or abandonment.
- 2209. — In general.
- 2210. — Want of actual controversy; mootness and ripeness.
- 2211. Scope and mode of review.
- 2212. — In general.
- 2213. — Standard of review.
- 2214. — Presumptions.
- 2215. — Harmless and reversible error.

XIII. FORECLOSURE.(Cont'd)

- 2216. — Waiver of error in appellate court.
- 2217. — Subsequent appeals.
- 2218. Determination and disposition.
- 2219. — In general.
- 2220. — Remand.

XIV. REDEMPTION.

(A) IN GENERAL.

- 2231. In general.
- 2232. Right to redeem.
- 2233. — In general.
- 2234. — Equitable or statutory nature.
- 2235. — Character of instrument or transaction.
- 2236. — Provisions of mortgage or agreements.
- 2237. — Method of foreclosure.
- 2238. — Loss of right; waiver and estoppel.
 - (1). In general.
 - (2). Failure to vacate or deliver possession of premises.
 - (3). Transfer of mortgaged property to mortgagee.
- 2239. Persons entitled to redeem.
- 2240. — In general.
- 2241. — Lessees or tenants.
- 2242. — Creditors.
 - (1). In general.
 - (2). Lienholders.
 - (3). Judgment creditors.
- 2243. — Grantees or purchasers.
 - (1). In general.
 - (2). Purchasers at judicial sales.
 - (3). Purchasers at foreclosure sales.
- 2244. — Spouse, survivors, or heirs of mortgagor.
- 2245. Assignment or other transfer of right; rights of transferees.
- 2246. Persons against whom right may be exercised.
- 2247. Priority; order of redemption.
- 2248. Redemption from party previously redeeming.
- 2249. Notice of redemption or of intent to redeem.
- 2250. — In general.

266. MORTGAGES AND DEEDS OF TRUST

XIV. REDEMPTION.(Cont'd)

- 2251. — Persons entitled to notice; service.
- 2252. Time for redemption.
- 2253. — In general.
- 2254. — Law day.
- 2255. — Tolling or extension of redemption period.
- 2256. — Agreements as to time.
- 2257. — Loss of right to redeem by lapse of time.
- 2258. Amount required to redeem.
- 2259. — In general.
- 2260. — Interest; late charges.
- 2261. — Fees, costs, and expenses in general.
- 2262. — Attorney fees.
- 2263. — Taxes and insurance.
- 2264. — Repair, maintenance, and improvements.
- 2265. — Damages for waste or other injury.
- 2266. — Rents and profits; value of use or occupation.
- 2267. Tender and payment.
- 2268. — In general.
- 2269. — Statements of amounts due or lawful charges.
- 2270. Redemption bonds.
- 2271. Certificate of redemption.
- 2272. — In general.
- 2273. — Recording.
- 2274. Partial redemption.

(B) ACTIONS AND PROCEEDINGS.

- 2281. In general.
- 2282. Nature, form, and right of action.
- 2283. Jurisdiction and venue.
- 2284. Time for proceedings; limitations and laches.
- 2285. Persons entitled to sue; standing; parties.
- 2286. Pleading.
- 2287. Evidence in general.
- 2288. — In general; admissibility.
- 2289. — Presumptions and burden of proof.
- 2290. — Weight and sufficiency.
- 2291. Reference.
- 2292. Trial or hearing.

XIV. REDEMPTION.(Cont'd)

- 2293. — In general.
- 2294. — Questions of law or fact in general.
- 2295. — Instructions.
- 2296. — Verdict, findings, and conclusions.
- 2297. Damages or other relief.
- 2298. Judgment, order, or decree.
- 2299. — In general.
- 2300. — Execution and enforcement.
- 2301. Costs and fees.
- 2302. Appellate review.

(C) CONCLUSIVENESS, OPERATION, AND EFFECT.

- 2311. In general.
- 2312. Extinguishment or termination of underlying debt or lien.
- 2313. Annulment of foreclosure sale.
- 2314. Other liens or encumbrances.
- 2315. Effect of failure to redeem.
- 2316. Effect of improper redemption.

XV. WRONGFUL ENFORCEMENT OR FORECLOSURE.

- 2321. In general.
- 2322. Existence, nature, and form of remedy.
- 2323. — In general.
- 2324. — Attempted wrongful enforcement or foreclosure.
- 2325. Elements, grounds, and defenses.
- 2326. — In general.
- 2327. — Attempted wrongful enforcement or foreclosure.
- 2328. — Particular cases.
 - (1). In general.
 - (2). Attempted wrongful enforcement or foreclosure.
- 2329. Actions and proceedings.
- 2330. — In general.
- 2331. — Conditions precedent.
- 2332. — Jurisdiction and venue.
- 2333. — Time for proceedings; limitations and laches.
- 2334. — Persons entitled to sue; standing; parties.
- 2335. — Pleading.
- 2336. — Evidence in general.
 - (1). In general; admissibility.

266. MORTGAGES AND DEEDS OF TRUST

XV. WRONGFUL ENFORCEMENT OR FORECLOSURE.(Cont'd)

- (2). Presumptions and burden of proof.
- (3). Weight and sufficiency.
- 2337. — Trial or hearing.
 - (1). In general.
 - (2). Questions of law or fact in general.
 - (3). Instructions.
 - (4). Verdict, findings, and conclusions.
- 2338. — Damages or other relief.
- 2339. — Judgment, order, or decree.
 - (1). In general.
 - (2). Conclusiveness, operation, and effect.
 - (3). Execution and enforcement.
- 2340. — Costs and fees.
- 2341. — Appellate review.

XVI. REVERSE MORTGAGES.

- 2351. In general.
- 2352. Remedies and enforcement in general.
- 2353. — In general.
- 2354. — Exclusive, concurrent, and conflicting remedies; election.
- 2355. — Waiver, estoppel, and consent.
- 2356. — Compromise, settlement, and release.
- 2357. Actions and proceedings in general.
- 2358. Foreclosure and foreclosure proceedings.
- 2359. — In general.
- 2360. — Appellate review.
- 2361. Redemption.
- 2362. Wrongful enforcement or foreclosure.

267. MOTIONS

SUBJECTS INCLUDED

Applications to a court or judge by or on behalf of parties to actions or other proceedings for a rule or order incident to the progress of the cause

Other applications for summary relief, and determination thereof

Nature, use, and scope of such applications in general

Requisites, filing, service, amendment, sufficiency, and effect of affidavits or petitions, notices of motion or orders to show cause, affidavits in answer and in reply, and other papers on which motions are made or opposed, and procedure relating thereto

Hearing, rehearing, decision, and renewal of motions

Making, entry, and effect of rules or orders

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Dismissal and nonsuit, motions for, see PRE-TRIAL PROCEDURE

Motions relating to—

Parties, process, pleadings and other particular proceedings in actions, see PARTIES, PROCESS, PLEADING, and other specific topics

Remedies incident to actions, see ARREST, CREDITORS' REMEDIES, and other specific topics

New trial motions, see NEW TRIAL

Judgment, motions to open or vacate, or in arrest of judgment, see JUDGMENT

Rules of court, see COURTS

1. Nature of proceeding.
2. Scope and purposes of remedy.
3. Existence of or resort to other remedy.
4. Successive motions for same relief.
5. Joinder in same motion of different grounds or forms of relief.
6. Jurisdiction.
7. — In general.
8. — Judge at chambers or out of court.
9. Place of moving.
10. Time for moving.
11. Parties.
12. Form and requisites.
- 12.1. — In general.
13. — Oral motions.
14. — Written motions in general.
15. — Entitling.
16. — Statement of grounds.
17. — Filing or entry.
18. Notice.

268. MUNICIPAL CORPORATIONS

- 18.1. — In general.
- 19. — Necessity.
- 20. — Authority to give.
- 21. — Form and requisites.
- 22. — Service and filing.
- 23. — Waiver.
- 24. Rule nisi or order to show cause.
- 25. Affidavits and other motion papers.
- 25.1. — In general.
- 26. — Necessity.
- 27. — Taking affidavits in general.
- 28. — Compelling making of affidavits.
- 29. — Requisites and sufficiency.
- 30. — Service and filing.
- 31. Counter affidavits and other opposing papers.
- 32. Appearance for purpose of motion.
- 33. Quashing or dismissal.
- 34. Countermanding, withdrawal, or abandonment.
- 35. Hearing.
- 36. — In general.
- 37. — Reception of evidence.
- 38. Reference.
- 39. Reargument or rehearing.
- 40. Determination.
- 41. Renewal.
- 42. — In general.
- 43. — Leave to renew.
- 44. — Motion papers.
- 45. — Hearing and determination.
- 46. Nature and essentials of orders in general.
- 47. Orders on consent.
- 48. Orders by default.
- 49. Settlement of orders.
- 50. Form and requisites of orders.
- 51. — In general.
- 52. — Recitals.
- 53. — Award of relief.
- 54. — Order nunc pro tunc or relation back.
- 55. — Direction to enter or signature.
- 56. Entry or filing of orders.
 - (1). In general.
 - (2). Entry nunc pro tunc.
- 57. Notice or service of orders.
- 58. Amendment of orders.
- 59. Vacating or setting aside orders.

- (1). In general.
- (2). Authority and jurisdiction of court or judge.
- (3). Proceedings.
- 60. Reinstatement of order vacated.
- 61. Collateral attack on orders.
- 62. Construction and operation of orders in general.
- 63. Conclusiveness of adjudication.
- 64. — In general.
- 65. — Recitals.
- 66. Enforcement of orders.

268. MUNICIPAL CORPORATIONS

SUBJECTS INCLUDED

Public corporations formed under special charters or by voluntary organization under general laws for purposes of subordinate local government of cities, towns, villages, etc.

Their status as bodies politic and corporate

Their creation, organization, boundaries, divisions, alteration, amendment or forfeiture of charters, and dissolution

Corporate powers and legislative regulation and control

Meetings of governing bodies, and passage of resolutions, ordinances, and by-laws

Municipal boards, officers, and agents, and their rights, powers, proceedings, and liabilities

Public improvements and assessments therefor, and grants of franchises or aid thereto

Control and regulation of public places and works, police regulations, permits, violations of regulations, and liabilities incurred in performance or for nonperformance of municipal duties or for acts of municipal boards, officers, or agents

Municipal property, contracts, indebtedness, bonds, and other securities

Municipal taxation, revenue, and finances other than income taxes and sales and use taxes

Claims against municipal corporations

268. MUNICIPAL CORPORATIONS

Actions by or against municipal corporations
Criminal prosecutions against municipal corporations

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Charitable and reformatory institutions, see
ASYLUMS AND ASSISTED LIVING FACILITIES, HEALTH, INFANTS, PRISONS

Counties, parishes, etc., see COUNTIES

Dedication of lands for streets and other municipal purposes, see DEDICATION

Election of municipal officers, see ELECTION LAW

Eminent domain, see EMINENT DOMAIN

Incidental works, structures, etc., maintenance and operation, see BRIDGES, FERRIES, WATER LAW, and other specific topics

Minor territorial subdivisions for special purposes, see EDUCATION, ELECTION LAW, and other specific topics

Municipal courts and judges, see COURTS, JUDGES

Municipal income taxes and sales and use taxes, see TAXATION

Particular proceedings against municipal corporations, their officers, etc., see QUO WARRANTO, MANDAMUS, PROHIBITION, INJUNCTION, CERTIORARI, and other specific topics

Public housing, see LANDLORD AND TENANT

Townships and towns not specially incorporated, see TOWNS

Zoning, see ZONING AND PLANNING

I. CREATION, ALTERATION, EXISTENCE, AND DISSOLUTION, ¶1-51.

(A) INCORPORATION AND INCIDENTS OF EXISTENCE, ¶1-22.

(B) TERRITORIAL EXTENT AND SUBDIVISIONS, ANNEXATION, CONSOLIDATION, AND DIVISION, ¶23-43.

(C) AMENDMENT, REPEAL, OR FORFEITURE OF CHARTER, AND DISSOLUTION, ¶44-51.

II. GOVERNMENTAL POWERS AND FUNCTIONS IN GENERAL, ¶52-63.2.

III. LEGISLATIVE CONTROL OF MUNICIPAL ACTS, RIGHTS, AND LIABILITIES, ¶64-79.

IV. PROCEEDINGS OF COUNCIL OR OTHER GOVERNING BODY, ¶80-122.

(A) MEETINGS, RULES, AND PROCEEDINGS IN GENERAL, ¶80-104.

(B) ORDINANCES AND BY-LAWS IN GENERAL, ¶105-122.

V. OFFICERS, AGENTS, AND EMPLOYEES, ¶123-220.

(A) MUNICIPAL OFFICERS IN GENERAL, ¶123-174.

(B) MUNICIPAL DEPARTMENTS AND OFFICERS THEREOF, ¶175-213.

(C) AGENTS AND EMPLOYEES, ¶214-220.

VI. PROPERTY, ¶221-225.

VII. CONTRACTS IN GENERAL, ¶226-255.5.

VIII. MUNICIPAL EXPENSES AND CHARGES AND STATUTORY LIABILITIES, ¶256-264.

IX. PUBLIC IMPROVEMENTS, ¶265-588.

(A) POWER TO MAKE IMPROVEMENTS OR GRANT AID THEREFOR, ¶265-288.

(B) PRELIMINARY PROCEEDINGS AND ORDINANCES OR RESOLUTIONS, ¶289-325.

(C) CONTRACTS, ¶326-376.5.

(D) DAMAGES, ¶377-404.

(E) ASSESSMENTS FOR BENEFITS, AND SPECIAL TAXES, ¶405-524.

(F) ENFORCEMENT OF ASSESSMENTS AND SPECIAL TAXES, ¶525-588.

X. POLICE POWER AND REGULATIONS, ¶589-645.

(A) DELEGATION, EXTENT, AND EXERCISE OF POWER, ¶589-629.

(B) VIOLATION AND ENFORCEMENT OF REGULATIONS, ¶630-645.

XI. USE AND REGULATION OF PUBLIC PLACES, PROPERTY, AND WORKS, ¶646-722.

(A) STREETS AND OTHER PUBLIC WAYS, ¶646-707.

(B) SEWERS, DRAINS, AND WATER COURSES, ¶708-715.

268. MUNICIPAL CORPORATIONS

XI. USE AND REGULATION OF PUBLIC PLACES, PROPERTY, AND WORKS—Cont'd

(C) PUBLIC BUILDINGS, PARKS, AND OTHER PUBLIC PLACES AND PROPERTY, §§716–722.

XII. TORTS, §§723–857.

(A) EXERCISE OF GOVERNMENTAL AND CORPORATE POWERS IN GENERAL, §§723–743.

(B) ACTS OR OMISSIONS OF OFFICERS OR AGENTS, §§744–754.

(C) DEFECTS OR OBSTRUCTIONS IN STREETS AND OTHER PUBLIC WAYS, §§755–826.

(D) DEFECTS OR OBSTRUCTIONS IN SEWERS, DRAINS, AND WATER COURSES, §§827–846.

(E) CONDITION OR USE OF PUBLIC BUILDINGS AND OTHER PROPERTY, §§847–857.

XIII. FISCAL MATTERS, §§858–986.

(A) POWER TO INCUR INDEBTEDNESS AND EXPENDITURES, §§858–878.

(B) ADMINISTRATION IN GENERAL, APPROPRIATIONS, WARRANTS, AND PAYMENT, §§879–905.

(C) BONDS AND OTHER SECURITIES, AND SINKING FUNDS, §§906–955.

(D) TAXES AND OTHER REVENUE, AND APPLICATION THEREOF, §§956–986.

XIV. TAXPAYERS' SUITS AND OTHER REMEDIES, §§987–1000.

XV. CLAIMS AGAINST CORPORATION, §§1001–1015.

XVI. ACTIONS, §§1016–1040.

XVII. CRIMINAL RESPONSIBILITY, §§1041–1043.

I. CREATION, ALTERATION, EXISTENCE, AND DISSOLUTION.

(A) INCORPORATION AND INCIDENTS OF EXISTENCE.

1. Nature and status as corporations.
 - 1.1. — In general.
2. — Public and quasi municipal corporations.
3. Power to create.
4. Constitutional provisions.
5. Grounds for incorporating.
6. Bodies which may be incorporated.
7. Territory which may be included.

I. CREATION, ALTERATION, EXISTENCE, AND DISSOLUTION.(Cont'd)

8. Special charters or acts.
 9. General laws.
 - 9.1. — In general.
 10. — Enactment and provisions.
 11. — Construction and operation in general.
 12. — Proceedings for incorporation.
 - (1). In general.
 - (2). Petition or application.
 - (2.1). — In general.
 - (3). — Designation of boundaries and annexation of map or plat.
 - (4). — Requisites as to petitioners.
 - (5). — Withdrawal of petitioners.
 - (6). Notice and objections thereto.
 - (7). Hearing of petition or application.
 - (8). Submission of question to popular vote.
 - (9). Order, judgment, or decree.
 - (10). Record of proceedings.
 - (11). Restraining proceedings.
 - (12). Review.
 - (13). Costs.
 13. — Organization of corporation.
 14. Defective incorporation or organization.
 15. Curative statutes.
 16. Official recognition of corporation.
 17. De facto corporations.
 18. Attacking validity of incorporation.
 19. Succession to pre-existing rights and liabilities.
 20. Evidence of corporate existence.
 21. Corporate name.
 22. Classification and grades of corporations.
- ### (B) TERRITORIAL EXTENT AND SUBDIVISIONS, ANNEXATION, CONSOLIDATION, AND DIVISION.
23. Territory included in general.
 24. Designation of boundaries.
 25. Establishment of boundaries.
 26. Alteration and creation of new municipalities.
 - 26.1. — In general.
 27. — Power to make change.
 28. — Change of boundaries in general.
 29. — Annexation of territory.
 - (.5). In general.

268. MUNICIPAL CORPORATIONS

I. CREATION, ALTERATION, EXISTENCE, AND DISSOLUTION.(Cont'd)

- (1). Constitutionality and validity and effect of statutes in general.
- (2). Power to annex territory in general.
- (3). Grounds for and objections to annexation.
- (4). Territory which may be annexed.
30. — Detachment of territory.
31. — Consolidation.
32. — Division.
33. — Proceedings.
 - (1). In general.
 - (2). Ordinances annexing or detaching territory.
 - (3). Who may apply for alteration and parties.
 - (4). Notice.
 - (5). Petition.
 - (6). Evidence.
 - (7). Judgment or order.
 - (8). Review.
 - (9). Proceedings to prevent or contest annexation in general.
 - (10). Collateral attack on proceedings.
34. — Submission of question to inhabitants or property owners.
35. — Operation and effect.
36. — Adjustment of pre-existing rights and liabilities.
 - (1). In general.
 - (2). Property.
 - (3). Contracts and indebtedness.
 - (4). Taxes and assessments.
 - (5). Municipal officers and employees.
 - (5.1). — In general.
 - (6). — Transfer to similar positions in new municipality.
 - (7). — Extinguishment or continuation of offices.
 - (8). — Compensation.
 - (9). — Pensions and benefit funds.
 - (10). Actions on pre-existing liabilities.
37. — Continuing operation of pre-existing ordinances.
38. Annexation or detachment of territory for special purposes.
39. Separate municipalities in same territory or in consolidated corporation.

I. CREATION, ALTERATION, EXISTENCE, AND DISSOLUTION.(Cont'd)

40. Wards, precincts, and other subdivisions.
41. Plan of city or town.
See also ZONING AND PLANNING.
42. Plats and surveys by public authority.
See also ZONING AND PLANNING.
43. Plats, additions, and subdivisions made by landowners.
See also ZONING AND PLANNING.
- (C) AMENDMENT, REPEAL, OR FORFEITURE OF CHARTER, AND DISSOLUTION.
44. Power to amend charter or statute.
45. Charter commissions or boards.
46. Amendment of charter or special act.
47. Amendment of general laws.
48. New charter and reorganization.
 - (1). In general.
 - (2). Operation and effect.
49. Repeal of charter or act of incorporation.
50. Forfeiture of charter.
51. Dissolution of corporation.

II. GOVERNMENTAL POWERS AND FUNCTIONS IN GENERAL.

52. Political status and relations.
53. — In general.
54. — Relation to state.
55. — Relation to county.
56. Constitutional provisions.
57. Powers and functions of local government in general.
58. Construction of charters and statutory provisions.
59. Powers incident to execution of those granted.
60. Powers and functions of council or other governing body.
61. Mode of exercise of powers in general.
62. Delegation or surrender of authority.
63. Judicial supervision.
 - 63.1. — In general.
 - 63.5. — Discretion.
 - 63.10. — Motives, wisdom or propriety of action.
 - 63.15. — Particular powers and functions.
 - (1). In general.
 - (2). Public improvements; redevelopment.
 - (3). Police power and regulations.

268. MUNICIPAL CORPORATIONS

II. GOVERNMENTAL POWERS AND FUNCTIONS IN GENERAL.(Cont'd)

- (4). Use and regulation of public places, property and works.
- (5). Fiscal management, revenue and taxation.

63.20. — Reasonableness of ordinances.

III. LEGISLATIVE CONTROL OF MUNICIPAL ACTS, RIGHTS, AND LIABILITIES.

- 64. Nature and scope of legislative power in general.
- 64.5. Organization of local government.
- 65. Local legislation.
- 66. Local administration.
- 67. Appointment and removal of officers.
 - (1). In general.
 - (2). Boards and commissions.
 - (3). Fixing or extending term of office.
 - (5). Compensation of officers.
- 68. Municipal property.
- 69. Imposition of liabilities in general.
- 70. Public improvements.
- 71. Grants of franchises or privileges.
- 72. Municipal debt, securities, and funds.
- 73. Municipal taxes and other revenue.
- 74. Mode of exercise of control in general.
- 75. Consent of local authorities or voters.
- 76. Confirmation or ratification of municipal acts.
- 77. Operation and effect of legislative acts.
- 78. — In general.
- 79. — Conflict with charter or act of incorporation.

IV. PROCEEDINGS OF COUNCIL OR OTHER GOVERNING BODY.

(A) MEETINGS, RULES, AND PROCEEDINGS IN GENERAL.

- 80. Nature and constitution of body in general.
- 81. Mayor as member of body.
- 82. Separate houses or branches.
- 83. Organization.
- 84. Determination of qualifications of members.
- 85. Mode of action in general.
- 86. Place and time of meeting.
- 87. Special meetings.
- 88. Adjourned meetings.

IV. PROCEEDINGS OF COUNCIL OR OTHER GOVERNING BODY.(Cont'd)

- 89. Calling and notice of meeting.
- 90. Quorum or number required to be present or act.
- 91. Committees.
- 92. Rules of procedure and conduct of business.
- 93. Right to vote.
- 94. — In general.
- 95. — Disqualification by interest.
- 96. Mode of voting.
- 97. Number of votes required.
- 98. Tie votes and casting vote.
- 99. Determination of result of vote.
- 100. Minutes and records.
- 101. Publication of proceedings.
- 102. Reconsideration and rescission of action.
- 103. Operation and effect of decisions.
- 104. Appeal from decisions.

(B) ORDINANCES AND BY-LAWS IN GENERAL.

- 105. Nature and requisites in general.
- 106. Enactment.
 - (1). In general.
 - (2). Reading, reference to committee, and time for passage.
 - (2.1). — In general.
 - (3). — Suspension of rules.
 - (4). Passage by both houses or branches.
- 107. Approval or veto.
 - (1). In general.
 - (2). Necessity for approval or signature.
 - (3). Requisites and sufficiency of approval or veto.
 - (4). Passage notwithstanding veto.
- 108. Initiative.
 - 108.1. — In general.
 - 108.2. — Matters subject to initiative.
 - 108.3. — Initiative procedure.
 - 108.4. — Amendment or repeal of initiated ordinances.
 - 108.5. Referendum.
 - 108.6. — In general; nature and source of power.
 - 108.7. — Administrative matters.
 - 108.8. — Legislative matters.

268. MUNICIPAL CORPORATIONS

IV. PROCEEDINGS OF COUNCIL OR OTHER GOVERNING BODY.(Cont'd)

- 108.9. — Tests of whether matter is administrative or legislative.
- 108.10. — Referendum procedure.
- 108.11. — Amendment or repeal of ordinances adopted on referendum.
- 109. Record.
- 110. Publication.
- 111. Validity in general.
 - (1). In general.
Certainty, definiteness, vagueness, and overbreadth, see CONSTITUTIONAL LAW.
 - (2). Conformity to constitutional and statutory provisions in general.
 - (3). Reasonableness and uniformity of operation.
 - (4). Effect of partial invalidity.
 - (5). Invalidity of dependent ordinance.
 - (6). Conflict with prior ordinance.
 - (7). Motives for enacting ordinance.
 - (8). Disqualification of members of board or council.
 - (9). Validating void ordinance.
- 112. Subjects and titles.
 - (1). In general.
 - (2). Plurality of subjects.
 - (3). Expression of subject in title.
- 113. Annulment.
- 114. Amendment.
- 115. Express repeal.
- 116. Implied repeal.
- 117. Suspension.
- 118. Expiration.
- 119. Revival.
- 120. Construction and operation.
- 121. Proceedings to determine validity of ordinances.
- 122. Pleading.
- 122.1. Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.

V. OFFICERS, AGENTS, AND EMPLOYEES.

(A) MUNICIPAL OFFICERS IN GENERAL.

- 123. Nature of municipal office or employment.

V. OFFICERS, AGENTS, AND EMPLOYEES.(Cont'd)

- 124. Constitutional and statutory provisions.
 - (1). In general.
 - (2). Appointment or election.
 - (3). Eligibility and qualification.
 - (4). Term of office, vacancies, and holding over.
 - (5). Removal.
 - (6). Compensation.
- 125. Applicability of civil service laws in general.
- 126. Creation and abolition of offices.
- 127. Apportionment to subdivisions.
- 128. Appointment or election.
- 129. — In general.
- 130. — Right to elect.
- 131. — Authority to appoint.
- 132. — Preference of discharged soldiers, sailors, or marines, or veteran firemen.
- 133. — Restrictions of civil service laws or rules.
- 134. — Application for and making of appointment in general.
- 135. — Concurrent action of different officers or bodies.
- 136. — Proceedings to determine validity of appointment or election.
- 137. Eligibility.
- 138. — In general.
- 139. — Under civil service laws, rules, and examinations.
- 140. — Pecuniary interest.
- 141. — Membership in council or board making appointment.
- 142. — Holding other office or employment.
- 143. Qualification.
- 143.1. — In general.
- 144. — Oath.
- 145. — Bond.
- 146. Commission.
- 147. De facto officers.
- 148. Deputies and assistants.
- 149. Term of office, vacancies, and holding over.
 - (1). In general.
 - (2). Term of office in general.
 - (3). Term of officer appointed or elected to fill vacancy.

268. MUNICIPAL CORPORATIONS

V. OFFICERS, AGENTS, AND EMPLOYEES.(Cont'd)

- (4). Enlargement of term and holding over after expiration of term.
- (5). Effect of transfer of city from one class to another.
- 150. Resignation or abandonment.
- 151. Disqualification.
- 152. Suspension.
- 153. Removal.
- 154. — In general.
- 155. — Authority to remove.
- 156. — Grounds.
- 157. — Preference of discharged soldiers, sailors, or marines, or veteran firemen.
 - (1). In general.
 - (2). Abolition of office and transfer to other service.
- 158. — Restrictions of civil service laws or rules.
- 159. — Proceedings and review.
 - (1). In general.
 - (2). Competency of officers to act in proceedings.
 - (3). Persons entitled to institute proceedings.
 - (4). Notice and hearing.
 - (5). Statement of charges.
 - (6). Review.
- 160. — Operation and effect.
- 161. Compensation.
- 162. — In general.
- 162.1. — Particular acts or services in general.
- 162.2. — Extra services; services pertaining to other offices.
- 162.3. — Effect of suspension; de jure or de facto officers.
- 162.4. — Effect of removal or expiration of term.
- 162.5. — Interest on public funds.
- 162.6. — Allowance of salary or fees.
- 162.7. — Payment and effect thereof.
- 163. — Reimbursement of expenditures.
- 164. — Increase or diminution.
- 165. — Actions and proceedings.
- 166. Authority and powers.
- 167. — In general.
- 168. — Mayor or other chief executive.
- 169. — Particular executive officers.

V. OFFICERS, AGENTS, AND EMPLOYEES.(Cont'd)

- 170. Duties and liabilities.
 - 172. Accounting for municipal funds or other property.
 - 173. Liabilities on official bonds.
 - (1). In general.
 - (2). Acts constituting breach of bond.
 - (3). Liability for particular funds.
 - (4). Officer holding over or succeeding himself and effect of new bond.
 - (5). Actions.
 - 174. Criminal responsibility.
- (B) MUNICIPAL DEPARTMENTS AND OFFICERS THEREOF.**
- 175. Nature and status of departments or boards as corporations.
 - 176. Constitutional and statutory provisions.
 - (1). In general.
 - (2). Public works.
 - (3). Police and fire.
 - (3.1). — In general.
 - (4). — Commissioners, board, or other governing body.
 - (5). — Chief or marshal or other executive.
 - (6). Water and sewers.
 - (7). Education.
 - 177. Creation, abolition, and incidents of existence of departments in general.
 - 177.5. Assignment of officers or commissioners to departments.
 - 178. Public works.
 - 179. Police.
 - 180. — In general.
 - (1). In general.
 - (2). Grades of service.
 - (3). Creation and abolition of offices.
 - 181. — Commissioners, board, or other governing body.
 - 182. — Chief or superintendent or other executive.
 - 183. — Marshal.
 - (.5). In general.
 - (1). Appointment or election.
 - (1.1). Eligibility.
 - (1.5). Bond.
 - (2). Term of office, vacancies, and holding over.

268. MUNICIPAL CORPORATIONS

V. OFFICERS, AGENTS, AND
EMPLOYEES.(Cont'd)

- (3). Removal.
- (4). Compensation.
- (5). Authority, powers, and liabilities.
- (6). Liabilities on official bonds.
- 184. — Appointment of policemen.
 - (1). In general.
 - (2). Eligibility, examination, certification, and qualification.
 - (3). Term of office, vacancies, and holding over.
 - (4). Resignation and abandonment.
- 184.1. — Promotion of policemen.
- 185. — Suspension and removal of policemen.
 - (5). In general.
 - (1). Grounds for removal or suspension.
 - (2). Defenses.
 - (3). Proceedings to remove in general.
 - (4). Necessity of assignment of cause and right to trial or hearing.
 - (5). Authority to remove, take evidence, or conduct hearing.
 - (6). Notice and time of hearing.
 - (7). Charges.
 - (8). Conduct of hearing in general.
 - (9). Evidence in general.
 - (10). Sufficiency of evidence to support finding or decision.
 - (11). Order or recommendation.
 - (12). Review in general.
 - (13). Review by certiorari.
 - (14). Reinstatement.
 - (15). Wrongful dismissal.
- 186. — Pay and other compensation.
 - (1). In general.
 - (2). Right to fees.
 - (3). Waiver of right to compensation.
 - (4). Effect of absence, removal, suspension, or expiration of term.
 - (5). Rate and amount.
 - (6). Actions to recover compensation.
- 187. — Pensions and benefit funds.
 - (1). In general.
 - (2). Eligibility for, and right to pension or benefits in general.
 - (3). Age and length of service.
 - (4). Contributions or assessments.

V. OFFICERS, AGENTS, AND
EMPLOYEES.(Cont'd)

- (5). Disability pension or compensation.
- (6). Death benefits.
- (7). Rate or amount.
- (8). Proceedings to obtain pensions or benefits.
 - (8.1). — In general.
- (9). — Evidence.
- (10). — Review of decisions.
- (11). Revocation, suspension, or termination.
- 188. — Authority and powers of policemen.
See also, Arrest, CRIMINAL LAW §1222-1224 and Searches and Seizures.
- 189. — Rights, duties, and liabilities of policemen.
 - (1). In general.
 - (2). Fines imposed by department officers.
 - (3). Protection from liability to third persons and reimbursement of expenditures.
- 190. — Criminal responsibility.
- 191. Health.
- 192. Buildings.
- 193. Fire.
- 194. — In general.
- 195. — Commissioners, board, or other governing body.
- 196. — Chief or superintendent or other executive.
- 197. — Appointment and promotion of firemen.
- 198. — Suspension and removal of firemen.
 - (1). In general.
 - (2). Grounds for removal.
 - (3). Proceedings.
 - (4). Review.
 - (5). Reinstatement.
- 199. — Pay and other compensation.
- 200. — Pensions and benefit funds.
 - (1). In general.
 - (2). Eligibility for, and right to pension or benefits in general.
 - (3). Membership in department.
 - (4). Contributions or assessments.

268. MUNICIPAL CORPORATIONS

V. OFFICERS, AGENTS, AND EMPLOYEES.(Cont'd)

- (5). Disability pension or compensation.
- (6). Death benefits.
- (7). Rate or amount.
- (8). Proceedings to obtain pensions or benefits.
- (8.1). — In general.
- (9). — Evidence.
- (10). — Review of decisions.
- (11). Revocation, suspension, or termination.
- 201. — Authority and powers.
- 202. — Duties and liabilities.
- 203. Streets and street cleaning.
- 204. Sewers and drains.
- 205. Water.
- 206. Light.
- 207. Conduits and subways.
- 208. Wharves and docks.
- 209. Markets.
- 210. Parks.
- 211. Education.
- 212. Charities and correction.
- 213. Particular institutions, buildings, or works.

(C) AGENTS AND EMPLOYEES.

- 214. Power to appoint or employ.
 - (1). In general.
 - (2). Architects.
 - (3). Counsel.
 - (4). Ratification of unauthorized employment.
 - (5). Delegation of power to appoint.
- 215. Constitutional and statutory provisions.
- 216. Applicability of civil service laws in general.
 - (1). In general.
 - (2). Rules.
- 217. Appointment or employment.
 - 217.1. — In general.
 - 217.2. — Probationary or temporary appointment.
 - 217.3. — Examination, classification, certification, and eligibility.
 - (.5). In general.
 - (1). Examination.
 - (2). Classification.

V. OFFICERS, AGENTS, AND EMPLOYEES.(Cont'd)

- (3). Certification.
- (4). Eligibility.
- (5). Eligible list.
- 217.4. — Preference of discharged soldiers, sailors, or marines.
- 217.5. — Transfer and promotion.
- 217.6. — Term of agency or employment and vacancies.
- 218. Removal, discharge, transfer or demotion.
 - (1). In general.
 - (2). Employees protected by civil service laws and rules.
 - (3). Grounds.
 - (4). Preference of discharged soldiers, sailors, or marines.
 - (5). Preference of veteran firemen.
 - (6). Abolition of offices or positions.
 - (7). Reduction of compensation or transfer to other employment.
 - (8). Proceedings.
 - (9). Review.
 - (10). Liability for unauthorized acts.
 - (11). Reinstatement.
- 219. Scope of agency or employment.
- 220. Compensation.
 - (1). In general.
 - (2). Rate or amount.
 - (3). Increase or diminution.
 - (4). Compensation for particular services.
 - (5). Compensation during absence in general.
 - (6). Compensation after discharge, suspension, or retirement.
 - (7). Necessity for appropriation.
 - (8). Proceedings to recover compensation.
 - (9). Pensions and benefits.

VI. PROPERTY.

- 221. Capacity to acquire and hold property in general.
- 222. Constitutional and statutory provisions.
- 223. Purposes for which property may be acquired or held.
- 224. Mode of acquiring property.
- 225. Sale or other disposition of property.

268. MUNICIPAL CORPORATIONS

VI. PROPERTY.(Cont'd)

- (1). In general.
- (2). Delegation of power.
- (3). Property acquired or held for special purpose.
- (4). Authority and powers of committee or officers.
- (5). Requisites and validity of conveyance or disposition.
- (6). Payment of price and disposition of proceeds.

VII. CONTRACTS IN GENERAL.

226. Capacity to contract in general.
227. Constitutional and statutory provisions.
228. Powers of council or other governing body.
229. Powers of particular departments.
230. Powers of officers or boards.
231. Individual interest of officer.
 - (1). In general.
 - (2). Public improvements.
 - (3). Contracts with corporation or partnership in which officer is interested.
 - (4). Recovery on quantum meruit or implied contract.
232. Power to bind successors.
233. Term or duration of contract.
234. Proposals or bids.
235. — In general.
236. — Contracts to be submitted to competition.
237. — Request or advertisement.
238. — Form and requisites.
239. — Deposit or other security.
240. — Acceptance or rejection in general.
241. — Award to lowest bidder.
242. — Failure of bidder to enter into contract.
243. Formal requisites.
244. Validity and sufficiency.
 - (1). In general.
 - (2). Manner of making contract.
 - (3). Effect of partial invalidity and presumptions in favor of validity.
245. Contractors' bonds.
246. Unauthorized or illegal contracts.
247. — In general.

VII. CONTRACTS IN GENERAL.(Cont'd)

248. — Ratification.
 - (1). In general.
 - (2). Ratification of contract in which officer is interested.
 - (3). Requisites and sufficiency of ratification.
249. Implied contracts.
250. Construction and operation.
251. Assignment.
252. Modification or rescission.
253. Performance or breach.
254. Rights and remedies of contractor and sureties.
255. Rights and remedies of municipality.
- 255.5. Priority of municipality as creditor.

VIII. MUNICIPAL EXPENSES AND CHARGES AND STATUTORY LIABILITIES.

256. Nature and grounds of liability.
257. Constitutional and statutory provisions.
258. Expenses of municipal government in general.
259. Election expenses.
261. Expenses connected with administration of justice.
262. — In general.
263. — Enforcement of municipal ordinances.
264. Liabilities specially imposed by statute.

IX. PUBLIC IMPROVEMENTS.

(A) POWER TO MAKE IMPROVEMENTS OR GRANT AID THEREFOR.

265. Nature and grounds of power in general.
266. Constitutional and statutory provisions.
267. Nature and purposes of improvements in general.
268. Public buildings.
269. Streets and other ways.
 - (1). In general.
 - (2). Construction, improvement, and repair.
 - (3). Establishment or change of grade and vacation.
 - (4). Sidewalks, footways, or crosswalks.
 - (5). Improvements interfering with franchises in streets.
270. Sewers, drains, and water courses.
271. Water supply.

268. MUNICIPAL CORPORATIONS

IX. PUBLIC IMPROVEMENTS.(Cont'd)

- 272. Lighting.
- 273. Conduits and subways.
- 273.5. Transportation and communication.
- 274. Wharves and docks.
- 275. Markets.
- 276. Parks and other public places.
- 277. Improvements and works beyond boundaries of municipality.
- 278. Exercise of power in general.
 - (.5). In general.
 - (1). Public convenience or necessity.
 - (2). Conditions precedent in general.
 - (3). Establishment of grade before permanent improvement.
 - (4). Recommendation by particular officers.
- 279. Submission of question to popular vote.
- 280. Necessity for application or consent of owners of property affected.
 - (1). In general.
 - (2). Grading, curbing, and paving.
 - (3). Sidewalks.
 - (4). Alteration of width or grade of street.
 - (5). Sewers.
- 281. Right or duty of property owners to make improvements.
 - (1). In general.
 - (2). Opportunity as prerequisite to award of contract or assessment.
 - (3). Notice to improve.
 - (4). Compliance with order or notice.
 - (5). Time allowed for making improvements.
- 282. Basis or plan of improvements.
 - (1). In general.
 - (2). Width and grade of streets or other ways.
 - (3). Sewers.
 - (4). Materials for construction.
- 283. Mode and time of doing work.
- 284. Delegation of power by municipality.
 - (1). In general.
 - (2). Basis or plan of improvement and mode of doing work.
 - (3). Designation of materials.
 - (4). Contracts.

IX. PUBLIC IMPROVEMENTS.(Cont'd)

- (5). Assessments.
- 285. Power to grant franchise or privilege in general.
- 286. Mode of aiding improvements.
- 287. Acquisition of existing works.
- 288. Mode and means of defraying expenses.
 - (1). In general.
 - (2). Requirement of means for payment.
 - (3). Certificate of officers as to sufficiency of funds.
- (B) PRELIMINARY PROCEEDINGS AND ORDINANCES OR RESOLUTIONS.
- 289. Necessity and nature of proceedings in general.
 - (1). In general.
 - (2). Improvements which may be included in one proceeding.
- 290. Statutory provisions.
- 291. Right to institute proceedings.
- 292. Petition or other application.
 - (1). In general.
 - (2). Form and requisites.
 - (3). Number and qualification of petitioners.
 - (4). Signature by agent or other representative.
 - (5). Withdrawal of consent.
- 293. Preliminary resolution or other action on application.
 - (1). In general.
 - (2). Description of improvement.
 - (3). As to necessity of improvement.
 - (4). Making of resolution.
- 294. Notice of proposed improvement or resolution.
 - (.5). In general.
 - (1). Statutory provisions.
 - (2). Necessity.
 - (3). Form, requisites, and validity in general.
 - (4). Description of improvement.
 - (5). Persons served or entitled to notice.
 - (6). Time of notice in general.
 - (7). Service, publication, and posting.
 - (8). Return or proof of service or publication.

268. MUNICIPAL CORPORATIONS

IX. PUBLIC IMPROVEMENTS.(Cont'd)

- 295. Reference or submission to particular officer or board.
- 296. Preliminary investigations and estimates.
 - (1). In general.
 - (2). Estimate of cost of improvement.
- 297. Remonstrances or objections.
 - (1). In general.
 - (2). Withdrawal of protest.
- 298. Hearing of persons interested.
- 299. Determination as to necessity and utility of improvement.
- 300. Ordinance, resolution, or order for improvement.
- 300.1. — In general.
- 301. — Necessity.
- 302. — Making and approval.
 - (1). In general.
 - (2). At special meeting.
 - (3). Number of votes in absence of petition.
 - (4). Publication.
- 303. — Form, requisites, and validity in general.
 - (1). In general.
 - (2). Resolution or ordinance.
 - (3). Declaration of necessity and utility of improvement.
 - (4). Partial invalidity.
- 304. — Description of improvement and specification as to material and work.
 - (1). In general.
 - (2). Streets and other ways.
 - (2.1). — In general.
 - (3). — Establishment of grade.
 - (4). — Description of street or portion thereof to be improved.
 - (5). — Designation of materials.
 - (6). — Catch-basins, curbing, and guttering.
 - (7). — Sidewalks.
 - (8). — Repairs.
 - (9). Sewers, drains, and water courses.
 - (10). Reference to other ordinances or to plans and specifications.
 - (11). Improvements authorized or required by ordinance.
 - (12). Variance between notice or petition and ordinance or order.

IX. PUBLIC IMPROVEMENTS.(Cont'd)

- (13). Variance from preliminary resolution or estimate.
- (14). Provisions as to time and mode of doing work.
- 305. — Provisions as to contracts for work.
- 306. — Provisions for defraying expenses and for levy of assessment.
- 307. Appointment of commissioners, officers, or committee to direct improvement.
- 308. Order or permission for making of improvement by property owners.
- 309. Grant of franchise or privilege in general.
- 310. Annulment of ordinance, resolution, or order.
- 311. Amendment of ordinance, resolution, or order.
- 312. Repeal of ordinance, resolution, or order.
- 313. Discontinuance of proceedings or abandonment of improvement.
- 314. Surveys, plans and specifications.
 - (1). In general.
 - (2). Change of plan.
- 315. Estimates of cost of work ordered.
- 316. Defects and objections.
- 317. Persons who may question validity of proceedings.
- 318. Waiver of objections.
- 319. Estoppel to attack proceedings.
- 320. Curative statutes and ordinances.
- 321. Review of proceedings.
 - (.5). In general.
 - (1). Right to review in general.
 - (1.1). — In general.
 - (2). — As to necessity or utility.
 - (3). Appeal or exceptions.
 - (4). Certiorari.
- 322. Compelling making of improvement.
- 323. Restraining making of improvement.
 - (1). In general.
 - (2). Defects in preliminary proceedings.
 - (3). Proceedings.
- 324. Collateral attack on proceedings.
- 325. Conclusiveness, operation, and effect of proceedings.

268. MUNICIPAL CORPORATIONS

(C) CONTRACTS.

- 326. In general.
- 327. Constitutional and statutory provisions.
- 328. Authority to contract in general.
- 329. Necessity for special contract.
- 330. Necessity for submission to competition.
 - (1). In general.
 - (2). Power to let contract without submission to competition or to dispense with requirements.
 - (3). Conditions and restrictions on bidders in general.
 - (4). Provisions for monopolized or patented articles or materials.
- 331. Request or advertisement for proposals or bids.
- 332. Form and requisites of proposals or bids.
- 333. Deposit or other security on making proposal or bid.
- 334. Acceptance or rejection of proposals or bids.
- 335. — In general.
- 335.1. — Time for opening bids and making award; withdrawal of bids.
- 335.2. — Reconsideration.
- 336. — Award to lowest bidder.
 - (1). In general.
 - (2). Form and requisites of bids.
 - (3). Consideration of reliability and responsibility of bidders.
 - (4). Consideration of character of materials and mode of doing work.
 - (5). Operation and effect of award.
- 337. Failure of bidder to enter into contract.
- 338. Formal requisites of contract.
- 339. Validity and sufficiency in general.
 - (1). In general.
 - (2). Conformity to estimates, specifications, and request for bid.
 - (3). Guaranties, indemnity, and stipulations for repairs.
 - (4). Single contracts including different improvements.
 - (5). Separate contracts for parts of improvements.
- 340. Conformity to provisions of charter, act, or ordinance authorizing improvement.
- 341. Effect of defects in preliminary proceedings.

IX. PUBLIC IMPROVEMENTS.(Cont'd)

- 342. Approval by council or other body or officer.
- 343. Advances and deposits by contractors.
- 344. Contractors' bonds.
 - 344.1. — In general.
- 345. — Necessity and power to require.
- 346. — Requisites and validity.
- 347. — Liabilities of sureties.
 - (1). In general.
 - (2). Persons secured.
- 348. — Actions.
- 349. Unauthorized or illegal contracts.
- 350. — In general.
- 351. — Ratification.
- 352. Construction and operation.
- 353. Assignment.
- 354. Modification or rescission.
- 355. Performance of work.
- 356. — In general.
- 357. — Control and inspection of work.
- 358. — Approval or certificate of engineer or other officers.
 - (1). In general.
 - (2). Form and sufficiency of certificate.
 - (3). Conclusiveness and effect.
- 359. — Substantial performance.
- 360. — Alterations and additional or extra work.
 - (1). In general.
 - (2). Order for or consent to extra work.
 - (3). Mistake in or change of plans and specifications or surveys.
 - (4). Necessity for notice, claim, or demand.
 - (5). Waiver of right to extra compensation.
 - (6). Compensation for extra work.
 - (7). Acceptance and approval or certificate as to extra work.
- 361. — Partial performance.
- 362. — Delay.
 - (1). In general.
 - (2). Extension of time for performance or waiver of delay.
- 363. — Defects.

268. MUNICIPAL CORPORATIONS

IX. PUBLIC IMPROVEMENTS.(Cont'd)

- 364. — Excuses for nonperformance or defects.
- 365. — Acceptance of performance and waiver of defects.
- 366. Completion of work by municipality.
- 367. Completion of work by other contractor or surety.
- 368. Guaranties of work and stipulations for repairs.
- 369. Payment of compensation.
- 370. — In general.
- 371. — From special fund or appropriation.
- 372. — From proceeds of assessments or special taxes.
 - (1). In general.
 - (2). Failure or neglect to levy or collect assessment or issue tax bills.
 - (3). Invalidity or insufficiency of special assessment or tax bills.
- 373. Liens for labor and materials.
 - (1). In general.
 - (2). Right to lien.
 - (3). Proceedings to perfect lien.
 - (4). Operation and effect of lien.
 - (5). Assignment of lien or claim.
 - (6). Waiver, loss, or discharge of lien.
 - (7). Enforcement.
- 374. Rights and remedies of contractors and sureties against municipality.
 - (1). In general.
 - (2). Conditions precedent and limitations.
 - (3). Pleading.
 - (4). Evidence.
 - (5). Damages.
 - (6). Trial, judgment, and review.
- 375. Rights and remedies of municipality.
- 376. Rights and remedies of third persons.
- 376.5. Criminal responsibility of contractors.

(D) DAMAGES.

- 377. Nature of liability in general.
- 378. Constitutional and statutory provisions.
- 379. Authority and acts of municipal officers as to making of improvement.
- 380. Accrual of right to damages and effect of abandonment of proceedings or improvement.

IX. PUBLIC IMPROVEMENTS.(Cont'd)

- 381. Nature of improvement.
- 382. — In general.
- 383. — Construction, improvement, or repair of streets or other ways.
- 384. — Alteration of course or width of streets.
- 385. — Change of grade of streets.
 - (1). In general.
 - (2). Nature and extent of change.
 - (3). Establishment and legality of street or grade.
 - (4). Change from natural surface.
- 386. — Vacation of streets.
- 387. — Structures and other works in streets.
- 388. — Sewers, drains, and water courses.
- 389. — Parks and other public places.
- 390. Property affected.
- 391. — In general.
- 392. — Location.
- 393. — Injuries to property of person or corporation holding franchise in street.
- 394. Nature of injury and elements of damage.
 - (1). In general.
 - (2). Erection of buildings after adoption of plan for change of grade.
 - (3). Destruction of shade trees.
 - (4). Interference with access.
 - (5). Injury to business or temporary loss of use of property.
 - (6). Removal of lateral support.
 - (7). Cost of grading or otherwise adjusting abutting premises.
- 395. Measure and amount in general.
 - (1). In general.
 - (2). Interest.
 - (3). Mitigation of damages.
- 396. Deduction or set-off of benefits.
- 397. Inadequate or excessive damages.
- 398. Persons entitled.
- 399. Estoppel, waiver, or loss of right.
- 400. Municipalities and persons liable.
- 401. Necessity for assessment and payment before making improvement.
- 402. Proceedings for assessment.
 - (1). In general.

268. MUNICIPAL CORPORATIONS

IX. PUBLIC IMPROVEMENTS.(Cont'd)

- (2). Jurisdiction.
- (3). Notice of proceedings.
- (4). Time for proceedings.
- (5). Application and proceedings thereon in general.
- (6). Appointment and proceedings of commissioners, jury, assessors, or viewers.
- (7). Report or award and proceedings thereon.
- (8). Defects and objections and waiver thereof.
- (9). Review.
- (10). Costs.
- 403. Payment of award.
- 404. Remedies of owners of property.
 - (5). In general.
 - (1). Nature and form of remedy.
 - (2). Actions for damages.
 - (3). Conditions precedent, limitations, and laches.
 - (4). Parties.
 - (5). Pleading.
 - (6). Evidence.
 - (7). Stay of proceedings.
 - (8). Questions for jury.
 - (9). Instructions.
 - (10). Judgment and review.
- (E) ASSESSMENTS FOR BENEFITS, AND SPECIAL TAXES.
- 405. Nature of assessment or tax.
- 406. Power to levy in general.
 - (1). In general.
 - (2). Delegation or grant of power by Legislature.
- 407. Constitutional requirements and restrictions.
 - (1). In general.
 - (2). Equality and uniformity.
 - (3). Double taxation.
 - (4). Taxation according to value.
- 408. Statutory provisions.
 - (1). In general.
 - (2). Enactment, amendment, or repeal after order for or construction of improvement.
- 409. Purposes in general.

IX. PUBLIC IMPROVEMENTS.(Cont'd)

- 410. Authority to make improvement or expenditure.
 - (1). In general.
 - (2). Existence and validity of way.
 - (3). Improvement encroaching on abutting land.
- 411. Nature of improvement.
- 412. — In general.
- 413. — Construction or improvement of streets or other ways.
 - (1). In general.
 - (2). Crosswalks and intersections.
 - (3). Streets occupied by railroads or used as turnpikes.
 - (4). Retaining walls.
- 414. — Reconstruction or repair of streets.
 - (1). In general.
 - (2). What constitutes original construction or reconstruction.
 - (3). Provisions of ordinance or contract for construction of improvement.
- 415. — Change of grade of streets.
- 416. — Alteration or vacation of streets.
- 417. — Sewers, drains, and water courses.
 - (1). In general.
 - (2). Rebuilding and repairing.
- 418. — Water supply, works, and mains.
- 419. — Lighting.
- 420. — Parks and other public places.
- 421. Nature of property liable.
 - 421.1. — In general.
- 422. — Private property in general.
- 423. — Unoccupied or unimproved property.
- 424. — Agricultural lands.
- 425. — Railroad property.
 - (1). In general.
 - (2). Depots, yards, and lands in general.
 - (3). Roadbeds and rights of way.
 - (4). Duty under statute, charter, or grant of franchise.
- 426. — Public property.
- 427. Location of property liable.
- 428. — In general.
- 429. — Abutting property.
- 430. — Adjoining or adjacent property.

268. MUNICIPAL CORPORATIONS

IX. PUBLIC IMPROVEMENTS.(Cont'd)

- 431. — Property abutting on street, but not the part improved.
- 432. — Property liable to assessments for sewers and drains.
- 433. — Property beyond boundaries of municipality.
- 434. Exemptions.
 - (1). In general.
 - (2). Property of religious and charitable institutions.
 - (3). Schools, colleges, and universities.
 - (4). Cemeteries.
 - (5). Homestead.
 - (6). Railroad property.
- 435. Conveyances to evade assessment.
- 436. Benefits to property.
- 436.1. — In general.
- 437. — Necessity.
- 438. — General or special.
- 439. — Nature, extent, and amount.
- 440. — Previous existence of similar improvement.
- 441. Property damaged by improvement.
- 442. Agreement, conveyance, or dedication between municipality and owner of property.
- 443. Effect of violation of provisions of charter, act, or ordinance authorizing improvement.
- 444. Effect of defects in proceedings preliminary to improvement.
- 445. Effect of invalidity of or irregularity in contract.
- 446. Effect of nonperformance of contract.
- 447. Necessity of acquisition of property or completion of improvement before assessment.
- 448. Making of or payment for part of improvement by owners of property.
- 449. Ordinance, resolution, or order for levy.
 - (5). In general.
 - (1). Necessity.
 - (2). Making and approval.
 - (3). Requisites and sufficiency.
 - (4). Construction and operation.
- 450. Assessment or taxing districts.
 - (1). In general.
 - (2). Boundaries and property included.
 - (3). Squares.

IX. PUBLIC IMPROVEMENTS.(Cont'd)

- (4). Proceedings for establishment.
- 451. Authority of council or other board or officer to make assessment.
- 452. Jurisdiction of courts to make assessment.
- 453. Commissioners or others specially appointed to make assessment.
 - (1). In general.
 - (2). Qualifications.
- 454. Proceedings for assessment.
- 455. Notice of proceedings for making of assessment and hearing thereon.
- 456. Mode of assessment in general.
 - (1). In general.
 - (2). Entire tracts or parcels or subdivisions.
 - (3). Assessment on part of tract.
 - (4). Inclusion of different improvements in one assessment.
- 457. Amount of assessment or tax.
- 458. — In general.
- 459. — Statutory limitations.
- 460. — Matters included in expenses of improvement.
- 461. — Final estimate or determination of amount.
- 462. — Variance from preliminary estimate.
- 463. — Excessive amount.
- 464. Apportionment of benefits and expenses of improvement.
- 465. — In general.
- 466. — Benefit to property in general.
- 467. — Value of property.
- 468. — Area of lots or tracts.
- 469. — Frontage of lots in general.
 - (1). In general.
 - (2). Lots varying in depth or value or laid out at acute angle with street.
 - (3). Mode of determining frontage.
 - (4). Assessment of each lot for cost of work done opposite.
- 470. — Corner lots or other lots fronting on more than one street.
- 471. — Deduction of damages.
- 472. — Unequal assessments.
- 473. — Excessive assessments.

268. MUNICIPAL CORPORATIONS

IX. PUBLIC IMPROVEMENTS.(Cont'd)

- 474. — Omission to enforce assessments or to assess property liable.
- 475. Determining mode and time of payment.
- 476. Form and contents of assessment.
- 477. — In general.
- 478. — Recitals.
- 479. — Description of property, and maps, plats, or diagrams.
- 480. — Designation of owners of property.
- 481. — Designation of amounts assessed.
- 482. — Provisions as to payment and enforcement.
- 483. Assessment rolls, reports, and records.
 - (1). In general.
 - (2). Making and attestation.
 - (3). Return, filing, and recording.
- 484. Presumptions as to validity of assessment and effect as evidence.
 - (1). In general.
 - (2). Conclusiveness.
 - (3). Evidence impeaching assessment.
- 485. Certificate, bond, warrant, or special tax bill against specific property.
 - (1). In general.
 - (2). Form and contents.
 - (3). Execution, issuance, and registration.
 - (4). Amendment, correction, and issuance of new bills.
 - (5). Conclusiveness and effect as evidence.
- 486. Notice of assessment.
 - (1). In general.
 - (2). Necessity.
 - (3). Form and sufficiency.
 - (4). Time of notice.
 - (5). Service.
 - (6). Publication.
 - (7). Return and proof of notice.
- 487. Persons who may question validity of assessment.
- 488. Estoppel or waiver as to defects or objections.
 - (1). In general.
 - (2). Provisions of or recitals in conveyance or lease of land.
 - (3). Petition for improvement.
 - (4). Acquiescence in work in general.

IX. PUBLIC IMPROVEMENTS.(Cont'd)

- (5). Failure to make or urge objections or to resort to legal remedies.
- (5.1). — In general.
- (6). — Establishment and boundaries of assessment district.
- (7). — Irregularities in letting or performance of contract.
- (8). — Apportionment of benefits and expenses of improvement.
- (9). Payment of assessment or portion thereof.
- (10). Accepting benefit of improvement.
- 490. Remedies of owners of property in general.
- 491. Objections and exceptions to assessment and hearing thereon in general.
- 492. Amendment or correction by officers making assessment.
- 493. Confirmation or revision of assessment by municipal council or board.
 - (1). In general.
 - (2). Proceedings.
 - (3). Effect of pendency of appeal to city council.
 - (4). Vacation or disapproval and new assessment.
 - (5). Amending, vacating, or setting aside order.
 - (6). Conclusiveness and effect of order.
- 494. Revision by jury.
- 495. Jurisdiction of courts as to assessment in general.
- 496. Confirmation or revision of assessment by court.
- 496.1. — In general.
- 497. — Grounds of objection.
- 498. — Jurisdiction.
- 499. — Notice of proceeding.
- 500. — Petition or other application.
- 501. — Objections or answer, and subsequent pleadings.
- 502. — Evidence.
 - (5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility.
 - (3). Weight and sufficiency.

268. MUNICIPAL CORPORATIONS

IX. PUBLIC IMPROVEMENTS.(Cont'd)

- 503. — Scope of inquiry and powers of court.
- 504. — Hearing or trial in general.
- 505. — Trial by jury.
- 506. — Confirmation, modification, or annulment of assessment.
- 507. — Judgment or order.
- 508. — Review.
 - (.5). In general.
 - (1). Appeal and error.
 - (1.1). — In general.
 - (2). — Right of review and requisites and proceedings for transfer of cause.
 - (3). — Parties on appeal.
 - (4). — Presentation and reservation in lower court of grounds of review.
 - (5). — Scope and contents of record.
 - (6). — Extent of review.
 - (7). — Determination and effect thereof.
 - (8). Certiorari.
- 509. — Costs.
- 510. — Operation and effect of confirmation.
- 511. Appeal from assessment.
 - (.5). In general.
 - (1). Right to appeal and questions reviewable.
 - (2). Proceedings and relief.
- 512. Certiorari to review assessment.
 - (1). In general.
 - (2). Time for proceedings.
 - (3). Proceedings and relief.
- 513. Actions to enjoin or set aside assessment.
 - (1). In general.
 - (2). Prevention of cloud on title.
 - (3). Existence of legal or statutory remedy.
 - (4). Conditions precedent to action.
 - (5). Time to sue, limitations, and laches.
 - (6). Parties.
 - (7). Pleading and evidence.
 - (8). Hearing, determination, and relief.

IX. PUBLIC IMPROVEMENTS.(Cont'd)

- (9). Appeal.
- 514. New or further assessment.
 - (.5). In general.
 - (1). Reassessments in general.
 - (1.1). — In general.
 - (2). — Grounds for reassessment.
 - (3). — Determination of invalidity of prior assessment.
 - (4). — Statutory provisions.
 - (5). — Effect of payment or enforcement of prior assessment.
 - (6). Adjustment of arrearages.
 - (7). Additional assessments in general.
 - (7.1). — In general.
 - (8). — Effect of invalidity of former assessment.
 - (9). Time for making new assessment.
 - (10). Notice of relevy or new assessment.
 - (11). Levy, amount, and apportionment of new assessment.
 - (11.1). — In general.
 - (12). — Confirmation and review.
- 515. Curative statutes and ordinances.
 - (.5). In general.
 - (1). Legislative action.
 - (2). Municipal action.
- 516. Collateral attack.
- 517. Operation and effect in general.
- 518. Interest.
 - (1). In general.
 - (2). Reassessments.
- 519. Lien and priority.
 - (1). In general.
 - (2). Perfecting and filing.
 - (2.1). — In general.
 - (3). — Form and sufficiency of claim.
 - (4). — Amendment of claim.
 - (5). Commencement and duration of lien.
 - (6). Priority.
 - (7). Effect of claim as evidence.
- 520. Payment and disposition.
- 521. — In general.
- 522. — Installments.
- 523. Refunding or recovery of assessment or tax paid.

268. MUNICIPAL CORPORATIONS

IX. PUBLIC IMPROVEMENTS.(Cont'd)

- (1). In general.
 - (2). Grounds for and objections to recovery in general.
 - (3). Payment by mistake or in ignorance of grounds of objection.
 - (4). Payment under protest.
 - (5). Actions.
524. Penalties for nonpayment.
- (F) ENFORCEMENT OF ASSESSMENTS AND SPECIAL TAXES.**
525. Nature and mode of proceeding in general.
526. Constitutional requirements and restrictions.
527. Statutory provisions.
528. Authority of collectors and other officers.
529. Property which may be subjected.
530. Time for enforcement in general.
531. Certification and warrant for collection.
532. Precept.
533. Demand.
534. Restraining enforcement.
535. — In general.
536. — Grounds.
537. — Payment or tender of amount due.
538. — Proceedings.
539. Proceedings for sale of land as delinquent.
540. — In general.
541. — Certificate of delinquency.
542. — Delinquent list.
543. — Publication or other notice.
544. Summary judgment or order for sale of land.
- 544.1. — In general.
545. — Nature of proceeding.
546. — Defenses and objections.
- (1). In general.
 - (2). Irregularity in preliminary proceedings.
 - (3). Contract and performance of work.
 - (4). Irregularity in assessment in general.
 - (5). Amount and apportionment of assessment.
 - (6). Form and sufficiency of objection.

IX. PUBLIC IMPROVEMENTS.(Cont'd)

- 547. — Jurisdiction.
- 548. — Time for application.
- 549. — Parties.
- 550. — Notice.
- 551. — Petition or other application.
- 552. — Answer and subsequent pleadings.
- 553. — Evidence.
- 554. — Hearing or trial.
- 555. — Judgment or order and enforcement thereof.
- 556. — Review.
- 557. Actions for sale of land.
- 557.1. — In general.
- 558. — Nature and form.
- 559. — Right of action of municipality.
- 560. — Right of action of contractor or assignee.
- 561. — Conditions precedent.
- 562. — Defenses.

 - (1). In general.
 - (2). Set-off or counterclaim in general.
 - (3). Damages caused by construction of improvement.

- 563. — Jurisdiction.
- 564. — Time to sue and limitations.
See also LIMITATION OF ACTIONS.
- 565. — Parties.
- 566. — Process.
- 567. — Pleading.

 - (.5). In general.
 - (1). Petition or complaint.
 - (1.1). — In general.
 - (2). — Averments as to preliminary proceedings and contracts.
 - (3). — Pleading ordinances or orders for improvement.
 - (4). Answer or affidavit of defense.
 - (5). Reply.
 - (6). Issues, proof, and variance.

- 568. — Evidence.

 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility.
 - (3). Weight and sufficiency.

- 569. — Trial or hearing.
- 570. — Judgment or decree.

 - (1). In general.

268. MUNICIPAL CORPORATIONS

IX. PUBLIC IMPROVEMENTS.(Cont'd)

- (2). Relief granted.
- (3). Opening and vacating.
- 571. — Review.
- 572. — Costs.
- 573. Sale of land.
- 574. — In general.
- 575. — Manner, conduct, and validity.
- 576. — Report or return, and record.
- 577. — Certificate of sale.
- 578. — Confirming, vacating, or setting aside.
- 579. — Title and rights of purchaser.
- 580. — Purchase by municipality and re-sale.
- 581. — Redemption.
- 582. — Conveyance to purchaser.
- 583. — Operation and effect.
- 584. — Proceeds of sale.
- 585. Enforcement against personal property.
- 586. Personal liability and enforcement thereof.
- 587. Enforcement in collateral proceedings.
- 588. Wrongful enforcement.

X. POLICE POWER AND REGULATIONS.

(A) DELEGATION, EXTENT, AND EXERCISE OF POWER.

- 589. Nature and scope of power of municipality.
- 590. Delegation of power of state.
- 591. Delegation of power by municipality.
- 592. Concurrent and conflicting exercise of power by state and municipality.
 - (1). In general.
 - (2). Acts prohibited and punishable under both general law and municipal ordinance.
 - (3). Different punishment, penalty, or license fee prescribed by ordinance.
 - (4). Ordinances permitting acts which state law prohibits.
- 593. Surrender or restriction of power by contract or license.
- 594. Ordinances and regulations in general.
 - (1). In general.
Certainty, definiteness, vagueness, and overbreadth, see CONSTITUTIONAL LAW.
 - (3). Uncertainty as to penalty.

X. POLICE POWER AND REGULATIONS.(Cont'd)

- (4). Persons bound by ordinances and regulations.
- (5). Disorderly houses.
- (6). Gaming.
- 595. Public safety and welfare.
- 596. Public peace and order.
- 597. Public health.
- 598. Public morals.
- 599. Protection of property.
- 600. Use of property in general.
See also ZONING AND PLANNING.
- 601. Building regulations.
See also ZONING AND PLANNING.
- 601.1. — In general.
- 601.2. — Matters subject to regulation.
- 601.3. — Validity of building regulations.
- 602. Billboards, signs, and other structures or devices for advertising purposes.
See also ZONING AND PLANNING. Limited to content and message; for structure and placement, see HIGHWAYS §153.5 and ZONING AND PLANNING §81, 282.
- 603. Prevention of and protection against fire.
- 604. Keeping and use of animals.
- 605. Nuisances in general.
- 606. Smoke and offensive or noxious odors.
- 607. Removal and disposition of garbage, refuse, and filth.
See also ENVIRONMENTAL LAW VIII.
- 608. Removal of dead animals.
- 609. Burial and transportation of dead bodies.
- 610. Regulation of occupations and employments.
- 611. — In general.
- 613. — Mechanical trades and pursuits.
- 614. — Vehicles and means of transportation.
- 615. — Mercantile business in general.
- 616. — Dealings in particular articles.
- 617. — Special privileges.
- 618. — Corporate franchises and privileges.
- 619. — Charges and prices.
- 620. Exercise of power in general.
- 621. Permits.
See also ZONING AND PLANNING.
- 622. Prohibitory ordinances.
See also ZONING AND PLANNING.

268. MUNICIPAL CORPORATIONS

X. POLICE POWER AND REGULATIONS.(Cont'd)

- 623. Abatement of nuisances.
 - (1). In general.
 - (2). Expense of abatement and assessments therefor.
 - (3). Surrender of property assessed.
 - (4). Actions.
- 624. Power to punish violations of regulations.
- 625. Reasonableness of regulations.
See also ZONING AND PLANNING. Excludes review by courts (see 63, ante).
- 626. Discrimination.
See also ZONING AND PLANNING.
- 627. Invasion of private rights in general.
- 628. Destruction of or injury to property.
- 629. Impounding of animals.

(B) VIOLATION AND ENFORCEMENT OF REGULATIONS.

- 630. Nature and elements of offenses in general.
- 631. Acts or omissions constituting violations of regulations.
 - (1). In general.
 - (2). Buildings regulations.
 - (3). Keeping and use of animals.
- 632. Defenses.
- 633. Fines and penalties and civil actions or proceedings therefor.
 - (1). In general.
 - (2). Nature of proceeding.
 - (3). Jurisdiction.
 - (4). Pleading.
 - (5). Joinder and splitting of causes.
 - (6). Evidence.
 - (7). Trial, judgment, and review.
 - (8). Costs.
- 634. Criminal prosecutions.
- 635. — In general.
- 636. — Jurisdiction, venue, and limitations.
- 637. — Preliminary proceedings.
- 638. — Summary trial.
- 639. — Complaint, indictment, information, affidavit, or warrant.
 - (1). In general.
 - (2). Pleading ordinance.
 - (3). Person by whom made.
 - (4). Verification, signing, and filing.

X. POLICE POWER AND REGULATIONS.(Cont'd)

- (5). Amendment.
- 640. — Evidence.
- 641. — Trial, judgment, and record.
- 642. — Review.
 - (1). In general.
 - (2). Right of municipality to review.
 - (3). Record and proceedings for transfer.
 - (4). Hearing and determination.
- 643. — Sentence and punishment.
- 644. — Costs.
- 645. Civil liability.

XI. USE AND REGULATION OF PUBLIC PLACES, PROPERTY, AND WORKS.

(A) STREETS AND OTHER PUBLIC WAYS.

- 646. Establishment in general.
- 647. Existence before incorporation or annexation of territory.
- 648. Establishment by prescription, user, or recognition.
- 649. Establishment by statute or statutory proceedings.
- 650. General plan and maps or plats.
- 651. Plats by landowners.
- 651.5. Names of streets.
- 652. Proceedings to determine existence or location.
- 653. Pleading existence.
- 654. Evidence as to existence or location.
- 655. Alteration of course or width.
- 656. Change of grade.
- 657. Vacation or abandonment.
 - (1). In general.
 - (2). Power to vacate or discontinue.
 - (3). Abandonment or nonuser.
 - (4). Petition, consent, or remonstrance of property owners.
 - (5). Proceedings.
 - (6). Review.
 - (7). Operation and effect.
- 658. Title and rights of municipality in general.
- 659. Use by municipality for purposes other than highway.
- 660. Power to control and regulate.
- 661. — In general.

268. MUNICIPAL CORPORATIONS

XI. USE AND REGULATION OF PUBLIC PLACES, PROPERTY, AND WORKS.(Cont'd)

- (1). In general.
- (2). Reasonableness and validity of regulations in general.
- (3). Regulation of use by corporations holding franchise.
- 662. — Municipal boards or officers.
- 663. Title and rights of abutting owners in general.
 - (1). In general.
 - (2). Ownership on vacation.
 - (3). Right to soil, trees, or other materials in roadway.
- 664. Privileges of and restrictions on abutting owners.
- 665. — In general.
- 667. — Structures or projections on or over street.
- 668. — Excavations, vaults, and other structures below street.
- 669. — Access to and use of roadway.
- 670. — Use of sidewalk.
- 671. — Rights and remedies as to obstructions or improper use of roadway.
 - (5). In general.
 - (1). Injuries from obstruction.
 - (1.1). — In general.
 - (2). — Nature and extent.
 - (3). — Defenses.
 - (4). — Actions.
 - (5). Abatement and injunction.
 - (5.1). — In general.
 - (6). — Adequacy of remedy at law.
 - (7). — Nature and extent of injury.
 - (8). — Defenses.
 - (9). — Proceedings and relief.
 - (10). Grants or licenses by city interfering with rights of abutting owners.
- 672. Work on streets by inhabitants, and poll taxes.
- 673. Cleaning streets.
- 674. Sprinkling streets.
- 675. Removal of snow and ice or other obstructions.
- 676. — In general.
- 677. — Sidewalks.

XI. USE AND REGULATION OF PUBLIC PLACES, PROPERTY, AND WORKS.(Cont'd)

- 678. Trees, parking, and other ornamentation.
- 679. Grant of rights to use street for purposes other than highway.
- 679.1. — In general.
- 680. — Power to grant franchises and privileges in general.
 - (1). In general.
 - (2). Power of particular officers or boards.
 - (3). Nature of purpose in general.
 - (4). Gas, water, or other underground conduits.
 - (5). Poles and wires.
 - (6). Railroads.
 - (7). Street railroads.
 - (8). Private use.
- 682. — Mode and extent of use.
 - (1). In general.
 - (2). Exclusive and conflicting grants.
 - (3). Duration of grant.
 - (4). Power to impose conditions.
- 683. — Making, requisites, and validity of grant or license.
 - (1). In general.
 - (2). Sale of franchise.
 - (3). Bond for compliance with franchise or permit.
- 684. — Construction and operation in general.
- 685. — Nature and extent of right.
- 686. — Exclusive grant or license.
- 687. — Conflicting grants or licenses.
- 688. — Effect on subsequent exercise of power of municipality.
- 689. — Right to question validity.
 - (1). In general.
 - (2). Judicial control and review of acts of municipality.
- 690. — Revocation or forfeiture.
- 691. Obstructions and encroachments.
 - 691.1. — In general.
- 692. — Obstruction of use.
- 693. — Buildings or other structures constituting encroachment.
- 695. — Ejectment.
- 696. — Removal.

268. MUNICIPAL CORPORATIONS

XI. USE AND REGULATION OF PUBLIC PLACES, PROPERTY, AND WORKS.(Cont'd)

- 697. — Action for abatement or injunction.
 - (1). In general.
 - (2). Suit by private person.
 - (3). Parties.
 - (4). Proceedings and relief.
- 698. — Actions for damages.
- 699. — Penalties and actions therefor.
- 700. — Criminal responsibility.
- 701. Use as highway.
- 701.1. — In general.
- 702. — Application of law of the road.
- 703. — Mode of use and regulation thereof in general.
 - (1). In general.
 - (2). Processions and unusual noises and performances in streets.
 - (3). Stopping and standing in streets.
 - (4). Regulations as to speed.
 - (5). Weight of loads.
- 704. — Use of sidewalk.
- 705. — Liabilities for injuries from negligent or other wrongful use.
 - (1). In general; care required.
 - (2). Mutual rights and duties as to meeting and crossing or overtaking and passing.
 - (3). Care required as to children.
 - (4). Violation of statute or ordinance.
 - (5). Rate of speed.
 - (6). Stopping or standing in street.
 - (7). Horses and animals not under control and runaways.
 - (8). Vicious propensities of animals driven or led in street.
 - (9). Frightening animals.
 - (10). Contributory negligence.
 - (11). Proximate cause of injury.
 - (12). Persons liable.
- 706. — Actions for damages for negligent or other wrongful use.
 - (5). In general.
 - (1). Pleading.
 - (2). Issues, proof, and variance.
 - (3). Presumptions and burden of proof.
 - (4). Admissibility of evidence.

XI. USE AND REGULATION OF PUBLIC PLACES, PROPERTY, AND WORKS.(Cont'd)

- (5). Sufficiency of evidence.
- (6). Questions for jury.
- (6.1). — In general.
- (7). — Contributory negligence.
- (8). Instructions.
- (9). Verdict and findings.
- (10). Damages.
- 707. — Offenses incident to travel.
- (B) SEWERS, DRAINS, AND WATER COURSES.
- 708. Establishment in general.
- 709. Sewers and drains existing before incorporation or annexation of territory.
- 710. Private sewers and drains.
- 711. Power to control and regulate.
- 712. Connections with sewers or drains.
 - (1). In general.
 - (2). Contracts relating to use of sewer system.
 - (3). Right or obligation to connect; fees.
 - (3.1). — In general.
 - (4). — Nonresidents.
 - (5). — Compelling connection.
 - (6). — Extension of lines.
 - (7). Sewer service fees.
 - (8). Sewer rates.
 - (9). Judicial proceedings.
- 713. Manner of use.
- 714. Natural water courses.
- 715. Surface water.
- (C) PUBLIC BUILDINGS, PARKS, AND OTHER PUBLIC PLACES AND PROPERTY.
- 716. Buildings for governmental purposes.
- 717. Buildings and structures for use of public in general.
- 718. Means of public transportation and communication.
- 719. Water frontage, landings, wharves, and docks.
 - (1). In general.
 - (2). Powers of particular officers.
 - (3). Exaction and regulation of wharfage.
 - (4). Leases and grants of franchises and privileges.

268. MUNICIPAL CORPORATIONS

XI. USE AND REGULATION OF PUBLIC PLACES, PROPERTY, AND WORKS.(Cont'd)

- (5). Purpose of grant.
- (6). Ownership of land.
- (7). Accretion and batture.
- 720. Markets and market places, stands, and stalls.
- 721. Parks and public squares and places.
 - (1). In general.
 - (2). Prevention of improper use or obstruction.
 - (3). Grants of rights to use public property.
 - (4). Forfeiture of lease or grant.
- 722. Grants of rights to use public property in general.

XII. TORTS.

(A) EXERCISE OF GOVERNMENTAL AND CORPORATE POWERS IN GENERAL.

- 723. Nature and grounds of liability.
- 723.5. Constitutional and statutory provisions.
- 724. Governmental powers in general.
- 725. Corporate powers in general.
- 726. Duties imposed with consent or for benefit of municipality.
- 727. Duties absolutely imposed.
- 728. Discretionary powers and duties.
- 729. Undertakings for pecuniary profit.
- 730. Acts authorized by charter or statute.
- 731. Performance of authorized acts in unauthorized or unlawful manner.
- 732. Acts ultra vires in general.
- 733. Construction and maintenance of public improvements and works in general.
 - (1). In general.
 - (2). Construction and repair of streets and sewers.
 - (3). Lighting plants.
 - (4). Waterworks.
- 734. Establishment and maintenance of public institutions.
- 735. Failure to enact or enforce ordinances or regulations.
- 736. Nuisances.
- 737. Trespass.
- 738. Conversion.
- 739. Destruction of property.
 - (1). In general.

XII. TORTS.(Cont'd)

- (2). Failure to protect private property against fire.
- 740. Injuries by mobs or other wrongdoers.
 - (1). In general.
 - (2). Conduct of person injured and notice of apprehended danger.
- 741. Notice or presentation of claims for injury.
 - 741.10. — In general.
 - 741.15. — Necessity and purpose.
 - 741.20. — Requirement as mandatory or condition precedent.
 - 741.25. — Applicability in particular cases.
 - 741.30. — Service or presentation; time therefor.
 - 741.35. — Effect of delay or failure to give.
 - 741.40. — Excuses for, and relief from, delay or failure.
 - (1). In general.
 - (2). Infancy.
 - (3). Physical or mental incapacity.
 - 741.45. — Amendment; new notice or claim.
 - 741.50. — Form and sufficiency.
 - 741.55. — Waiver and estoppel.
 - 741.60. — Action by council on claim.
- 742. Actions.
 - (1). In general.
 - (2). Parties.
 - (3). Time to sue and limitations.
See also LIMITATION OF ACTIONS.
 - (4). Pleading.
 - (5). Evidence.
 - (6). Trial, judgment, and review.
- 743. Damages.
- (B) ACTS OR OMISSIONS OF OFFICERS OR AGENTS.
- 744. Liability of officers or agents.
- 745. Application of principle of agency to municipalities.
- 745.5. Performance of governmental or corporate functions in general.
- 746. Employment of incompetent agents or servants.
- 747. Particular officers and official acts.
 - (1). In general.
 - (2). Public works and improvements.

268. MUNICIPAL CORPORATIONS

XII. TORTS.(Cont'd)

- (3). Police and fire.
 - (4). Health and education.
 - 748. Exercise of rights or privileges granted by municipality.
 - 749. Performance of contracts with municipality.
 - 750. — In general.
 - 751. — Independent contractors and their employees.
 - (1). In general.
 - (2). Stipulations as to duties and liabilities.
 - (3). Contracts to be performed under supervision of city.
 - 752. Performance of duties to or services for others than municipality.
 - 753. Scope of authority or employment.
 - (1). In general.
 - (2). Pleading and evidence.
 - 754. Ratification or repudiation.
- (C) DEFECTS OR OBSTRUCTIONS IN STREETS AND OTHER PUBLIC WAYS.**
- 755. Nature and grounds of liability.
 - (1). In general.
 - (2). Liability implied from power or duty to construct, maintain, and control.
 - 756. Statutory provisions.
 - 757. Duty to construct or repair streets and other ways.
 - (1). In general.
 - (2). Duty imposed on abutting owner.
 - (3). Duty imposed on private corporations.
 - (4). Lack of funds for making repairs.
 - 758. Streets and other ways as to which municipality is liable.
 - 759. — In general.
 - (1). In general.
 - (2). Establishment or existence of street in general.
 - (3). Establishment by user or recognition.
 - (4). Abandonment of street.
 - (5). Unopened, unimproved, or partially improved streets or ways.
 - 760. — Lanes, alleys, and courts.

XII. TORTS.(Cont'd)

- 761. — Sidewalks, footways, and crosswalks.
 - (1). In general.
 - (2). Sidewalks built by abutting owners or other third persons.
 - (3). Walks outside limits of street.
- 762. Cause of or responsibility for defects, obstructions, or dangerous conditions.
 - (1). In general.
 - (2). Acts or omissions of private persons or corporations.
 - (3). Failure to prevent or permitting improper use of street.
- 763. Care required as to condition of way.
 - (1). In general.
 - (2). Care dependent on number, extent, and use of streets or sidewalks.
 - (3). Time allowed for making repairs or removing obstructions.
- 764. Sufficiency and safety of way in general.
 - (1). In general.
 - (2). Sufficiency for particular vehicles or modes of use.
 - (3). Width of driveway or sidewalk.
- 765. Nature of defects.
- 766. — In general.
- 767. — Construction or condition of roadway.
- 768. — Construction or condition of sidewalk, footway, or crosswalk.
 - (1). In general.
 - (2). Defect in plan of construction.
 - (3). Depressions and inequalities in surface.
 - (4). Steps or abrupt slopes.
- 769. Water, snow, and ice.
- 770. — In general.
- 771. — Sidewalk, footway, or crosswalk.
- 772. — Accumulation caused by or accompanying defects or other concurring causes.
- 773. — Removal.
- 774. Obstructions.
- 775. — In general.
- 776. — Roadway.
- 777. — Sidewalk, footway, or crosswalk.
- 778. Falling objects.
- 778.5. — In general.

268. MUNICIPAL CORPORATIONS

XII. TORTS.(Cont'd)

- 779. — Structures or projections over street.
- 780. — Buildings or other structures adjacent to street.
- 781. Objects frightening animals in street.
- 782. Embankments, excavations, and openings.
- 783. — In general.
- 784. — Roadway.
- 785. — Sidewalk, footway, or crosswalk.
- 786. Property adjacent to street.
- 787. Notice of defect or obstruction.
- 788. — In general.
- 788.1. — Unsafe condition caused by, or under control of municipality.
- 788.2. — Defect in construction or repair.
- 789. — Hidden or latent defects.
- 790. — To municipal officers, agents, or private citizens.
- 791. — Constructive notice.
 - (1). In general.
 - (2). Time of existence of defect or obstruction.
 - (3). Notice of general condition or particular defect.
 - (4). Known causes likely to produce defect.
 - (4.1). — In general.
 - (5). — Tendency of wood to decay.
- 792. — Notice of ice or snow.
- 793. Precautions against injury.
- 794. — In general.
- 795. — Inspection.
- 796. — Barriers, or covering or guarding dangerous places.
- 797. — Lights in general.
- 798. — Notices, warning signals, or lights.
- 799. — Precautions while making improvements.
- 800. Proximate cause of injury.
 - (1). In general.
 - (2). Concurrent causes in general.
 - (3). Ice or snow.
 - (4). Fright of or accident to horses.
 - (5). Negligence or wrongful act of third person.
 - (6). Intervening causes.
- 801. Rights of person injured in general.

XII. TORTS.(Cont'd)

- (1). In general.
- (2). Improper use of street.
- (3). Injury to person responsible for defect.
- 802. Contributory negligence.
- 802.1. — In general.
- 803. — Care required in general.
 - (1). In general.
 - (2). Traveling in nighttime in general.
- 804. — Care required of children and others under disability.
- 805. — Knowledge of defect or danger.
 - (.5). In general.
 - (1). Precautions against known dangers in general.
 - (2). Use of defective driveway or sidewalk.
 - (3). Traveling in nighttime with knowledge of danger.
 - (4). Extent of knowledge.
 - (5). Relation of knowledge to cause of injury.
 - (6). Inadvertence or momentary forgetfulness.
 - (7). Disregarding warnings or signals.
 - (8). Constructive notice.
- 806. — Duty to observe defect or danger.
 - (1). In general.
 - (2). Right to assume that street is free from defects.
 - (3). Nature of defect or obstruction and opportunity to observe same.
 - (4). Traveling in nighttime.
- 807. — Choice of ways.
 - (1). In general.
 - (2). Leaving traveled portion of way.
 - (3). Pedestrian leaving sidewalk or crosswalk.
- 808. Liabilities of abutting owners.

Liabilities as between landlord and tenant, see LANDLORD AND TENANT §167; liabilities for injuries from acts or objects on adjacent premises, see NEGLIGENCE §1071, 1152; joint and several liability of city and abutting owner, see §814; and indemnity to municipality, see INDEMNITY.

 - (1). In general.
 - (2). Obstructions on sidewalk or driveway.
 - (3). Openings in, or excavations under, sidewalk.

268. MUNICIPAL CORPORATIONS

XII. TORTS.(Cont'd)

- (4). Failure to construct or repair.
- (5). Injuries caused by ice or snow.
- (6). Right and title of defendant.
- (7). Violation of ordinance or regulation.
- (8). Permission of municipality.
- (9). Notice of dangerous condition.
- 809. Liabilities of persons causing defects or obstructions.
 - (1). In general.
 - (2). Contractors.
- 810. Actions for injuries.
- 810.1. — In general.
- 811. — Grounds and conditions precedent in general.
- 812. — Notice of claim for injury.
 - (1). In general.
 - (2). Necessity.
 - (3). To abutting owner or person causing defect.
 - (4). Statutory provisions.
 - (5). Waiver.
 - (6). Form and sufficiency.
 - (6.1). — In general.
 - (7). — Time, place, cause, and nature of injury.
 - (8). Verification or proof.
 - (9). Service or presentation.
 - (10). Failure to give notice and excuse therefor.
 - (11). Amendment or new notice.
- 813. — Time to sue and limitations.
See also LIMITATION OF ACTIONS.
- 814. — Parties.
- 815. — Process.
- 816. — Pleading.
 - (.5). In general.
 - (1). Declaration, complaint, or petition in general.
 - (2). Allegations as to duty and liability of defendant in general.
 - (3). Location and nature of defect.
 - (4). Notice of defect or obstruction.
 - (5). Notice or presentation of claim for injury.
 - (6). Negating contributory negligence or other fault.
 - (7). Answer.
 - (8). Issues and proof.

XII. TORTS.(Cont'd)

- (8.1). — In general.
- (9). — General issue.
- (10). Variance between allegations and proof.
- (11). Variance between notice of claim and pleading or proof.
- 817. — Presumptions and burden of proof.
 - (1). In general.
 - (2). Existence of defect or happening of accident or injury.
 - (3). Contributory negligence.
- 818. — Admissibility of evidence.
 - (1). In general.
 - (2). Negligence of defendant in general.
 - (3). Condition of way and nature of defect or obstruction.
 - (4). Notice of defect in general.
 - (5). Contributory negligence.
 - (6). Condition of way prior to accident.
 - (7). Condition subsequent to accident.
 - (8). Condition at other places and existence of similar defects.
 - (9). Other accidents at same place.
 - (10). Ordinances, resolutions, or other action by municipality.
 - (11). Subsequent repairs or precautions against injury.
 - (12). Evidence as to notice of claim or demand.
- 819. — Sufficiency of evidence.
 - (1). In general.
 - (2). Snow and ice.
 - (3). Excavations and precautions against injury therefrom.
 - (4). Cause of injury.
 - (5). Existence or location of street.
 - (6). Notice of defect.
 - (7). Contributory negligence.
 - (8). Notice of claim.
- 820. — Conduct of trial in general.
- 821. — Questions for jury.
 - (1). In general.
 - (2). Existence of street for which municipality is responsible.
 - (3). Negligence of defendant in general.

268. MUNICIPAL CORPORATIONS

XII. TORTS.(Cont'd)

- (4). Sufficiency and safety of way in general.
- (5). Construction or condition of road way.
- (6). Construction or condition of sidewalk, footway, or crosswalk.
- (7). Snow and ice.
- (8). Obstructions.
- (9). Falling objects.
- (10). Objects frightening animals in street.
- (11). Excavations and openings in driveway or sidewalk.
- (12). Precautions against injury.
- (12.1). — In general.
- (13). — Barriers or guards in general.
- (14). — Lights and warnings.
- (15). Notice of defect or obstruction.
- (15.1). — In general.
- (16). — Constructive notice.
- (17). Negligence of abutting owner.
- (18). Negligence of person causing defect or obstruction.
- (19). Proximate cause of injury.
- (20). Contributory negligence in general.
- (20.1). — In general.
- (21). — Of children or others under disability.
- (22). — Traveling in nighttime.
- (23). Knowledge by person injured of defect or danger.
- (23.1). — In general.
- (24). — Traveling in nighttime.
- (25). Duty of person injured to observe defect or obstruction.
- (26). Choice of ways by person injured.
- (27). Sufficiency of notice of claim for injury.
- 822. — Instructions.
- (5). In general.
- (1). Form, requisites, and subject-matter in general.
- (2). Care of way and negligence of defendant.
- (3). Notice to defendant of defect or obstruction.

XII. TORTS.(Cont'd)

- (4). Contributory negligence.
- (5). Applicability to pleadings and evidence.
- 823. — Verdict and findings.
- 824. — Judgment.
- 825. — Appeal and error.
- 826. — Costs.
- (D) DEFECTS OR OBSTRUCTIONS IN SEWERS, DRAINS, AND WATER COURSES.
- 827. Nature and grounds of liability.
- (1). In general.
- (2). Sewers or drains as to which liability extends.
- (3). Degree of care required.
- 828. Statutory provisions.
- 829. Duty to construct sewers and drains.
- 830. Sufficiency of sewers and drains in general.
- 831. Defects in sewers or drains.
- (.5). In general.
- (1). Defects in plan of sewers and drains.
- (2). Defects in construction.
- 832. Defects or obstructions after construction of sewer or drain.
- 833. Defective connection with sewer or drain.
- 834. Obstruction or diversion of water course.
- 835. Obstruction or diversion of flow of surface water.
- 836. Discharge of sewage.
- 837. — In general.
- 838. — Pollution of streams or other waters.
- 839. Notice of defect.
- 840. Proximate cause of injury.
- 841. Right to relief in general.
- 842. Contributory negligence.
- 843. Negligence or other fault of third persons.
- 844. Liabilities of persons causing defects or obstructions.
- 845. Actions for injuries.
- (.5). In general.
- (1). Nature of remedy and notice or presentation of claim.
- (2). Parties and pleading.
- (3). Issues, proof, and variance.

268. MUNICIPAL CORPORATIONS

XII. TORTS.(Cont'd)

- (4). Evidence.
- (5). Questions for jury.
- (6). Instructions and verdict and findings.
- (7). Damages.
- 846. Abatement and injunction.

(E) CONDITION OR USE OF PUBLIC BUILDINGS AND OTHER PROPERTY.

- 847. Nature and grounds of liability of municipality as proprietor.
- 848. Buildings in general.
- 849. Water frontage, landings, wharves, and docks.
- 850. Markets and market places.
- 851. Parks and public squares and places.
- 852. Vehicles, apparatus, machinery, and appliances.
- 853. Vessels and boats.
- 854. Proximate cause of injury.
- 855. Contributory negligence.
- 856. Negligence or other fault of third persons.
- 857. Actions for injuries.

XIII. FISCAL MATTERS.

(A) POWER TO INCUR INDEBTEDNESS AND EXPENDITURES.

- 858. Nature and scope of power.
- 859. Constitutional and statutory provisions.
- 860. Purposes of appropriations or expenditures in general.
- 861. Municipal purposes.
- 862. Limitation of amount.
- 863. — In general.
- 864. — Debts and expenditures subject to limitation.
 - (1). In general.
 - (2). Current expenses.
 - (3). Public improvements, property, and works.
 - (4). Indebtedness payable out of special fund or from special assessment.
 - (5). Debts incurred in anticipation of collection of taxes.
 - (6). Executory contracts.
 - (7). Torts.
- 865. — Computation of limit or amount.

XIII. FISCAL MATTERS.(Cont'd)

- (1). In general.
 - (2). Expenditures and indebtedness included.
 - (3). Value of taxable property.
 - 866. Exercise of power in general.
 - 867. Submission of question of expenditure to popular vote.
 - (1). In general.
 - (2). Debts and expenditures which must be submitted.
 - (3). Calling, conduct, and result of election.
 - (4). Operation and effect.
 - 868. Requirement of provision for payment.
 - (1). In general.
 - (2). Contracts for water and lighting.
 - (3). Certificate as to funds.
 - 869. Borrowing money.
 - 870. Limitation on use of funds or credit in general.
 - 871. Donations, gratuities, and charitable purposes.
 - 872. Aid to corporations, and subscription to or purchase of corporate stock.
 - 873. — In general.
 - 874. — Submission of question to popular vote.
 - 875. — Requisites and validity.
 - 876. — Construction and operation.
 - 877. — Rights and liabilities of municipality.
 - 878. Unauthorized debts and expenses.
- #### (B) ADMINISTRATION IN GENERAL, APPROPRIATIONS, WARRANTS, AND PAYMENT.
- 879. Administration of finances in general.
 - 880. Collection and custody of funds.
 - 881. Adjustment of accounts with state.
 - 882. Adjustment of accounts with county or other municipalities.
 - 883. Disbursements in general.
 - 884. Loaning or investment of funds.
 - 885. Reports and statements as to finances.
 - 886. General funds.
 - 887. Special funds.
 - 888. Apportionment of funds.
 - 889. Appropriations.
 - 889.1. — In general.

268. MUNICIPAL CORPORATIONS

XIII. FISCAL MATTERS.(Cont'd)

- 890. — Making and requisites.
- 891. — Operation and effect.
- 892. — Transfer or diversion.
- 893. Priorities.
- 894. Payment of indebtedness in general.
- 895. Warrants and certificates of indebtedness.
- 896. — In general.
- 897. — Power and duty to issue.
- 898. — Issuance, requisites, and validity.
- 899. — Construction and operation in general.
- 900. — Amount.
- 901. — Interest.
- 902. — Negotiability and transfer.
- 903. — Surrender for reissue, funding, or redemption.
- 904. — Payment.
 - (1). In general.
 - (2). Priorities and order of payment.
- 905. — Remedies.

(C) BONDS AND OTHER SECURITIES, AND SINKING FUNDS.

- 906. Nature of power to issue securities.
- 907. Constitutional and statutory provisions.
- 908. Issuance and validity of bills and notes.
- 909. Purposes of issue of bonds.
- 910. — In general.
- 911. — Public improvements.
- 912. — Aid to corporations, and subscription to or purchase of corporate stock.
- 913. — Funding or refunding indebtedness.
- 914. Limitation of amount of bonds.
- 915. — In general.
- 916. — Particular purposes.
- 917. Proceedings preliminary to issue of bonds.
 - (1). In general.
 - (2). Determination of validity.
- 918. Submission of question of issue of bonds to popular vote.
 - (1). In general.
 - (2). Ordinance or resolution for election and form of submission.
 - (3). Application for and notice of election.
 - (4). Conduct and record of election.

XIII. FISCAL MATTERS.(Cont'd)

- (5). Operation and effect of election.
- 919. Provision for payment or redemption of bonds.
- 920. Authority of officers or agents.
- 921. Sale or other disposition of bonds by municipality.
 - (1). In general.
 - (2). Allowance of commission.
 - (3). Proceeds of sale.
- 922. Form and contents of bonds.
- 923. — In general.
- 924. — Necessary recitals.
- 925. — Provisions as to payment.
- 926. — Provisions as to interest and coupons.
- 927. Execution of bonds.
- 928. Issuance and delivery of bonds.
- 929. — In general.
- 930. — Fulfillment of conditions.
- 931. Validity of bonds in general.
- 932. Ratification of invalid bonds.
- 933. — In general.
- 934. — Payment of principal or interest.
- 935. Curative statutes and ordinances.
- 936. Registration of bonds.
- 937. Rights of payees or original purchasers in general.
- 938. Negotiability and transfer of securities.
- 939. Rights and liabilities on transfer of securities in general.
- 940. Bona fide purchasers.
- 940.1. — In general.
- 941. — Good faith in general.
- 942. — Constructive notice, and facts putting on inquiry.
- 943. — Effect of recitals in bonds.
 - (1). In general.
 - (2). Power to issue.
 - (3). Performance of conditions precedent to issue and regularity thereof.
 - (4). Limitation of indebtedness.
 - (5). Purpose of issue and consideration.
- 944. — Effect of recitals in municipal records.
- 945. — Effect of official decisions, certificates, and affidavits.

268. MUNICIPAL CORPORATIONS

XIII. FISCAL MATTERS.(Cont'd)

- 946. — Consideration.
- 947. — Purchasers from bona fide holders.
- 948. — Defenses as against bona fide holders.
 - (1). In general.
 - (2). Invalidity of statute under which bonds were issued.
 - (3). Want of authority to issue.
 - (4). Fraud or irregularity in exercise of power.
 - (5). Want or failure of consideration and collateral agreements.
 - (6). Bonds exceeding limit of indebtedness.
 - (7). Improper use of proceeds.
- 949. Rights and remedies of holders of invalid securities.
- 950. Bonds secured by special assessment or fund.
 - (1). In general.
 - (2). Trust-fund doctrine in general.
 - (3). Validity of bonds.
 - (4). Validity of contract to collect.
 - (5). Negotiability of bonds.
 - (6). Liability of municipality for acts or omissions affecting recovery by bondholder in general.
 - (7). Depletion of funds collected.
 - (8). Excessive assessments.
 - (9). Negligence and misconduct of officers and agents.
 - (10). Payment where fund is insufficient to pay all bonds.
 - (11). Penalties for nonpayment of assessments.
 - (12). Prepaid assessments.
 - (13). Priorities.
 - (14). Purchase of property by city at foreclosure sale.
 - (15). Revenue-producing enterprises.
 - (16). Time for payment of bonds.
- 951. Sinking funds and redemption.
- 952. Payment.
- 953. — In general.
- 954. — Interest and coupons.
- 955. Actions.
 - (.5). In general.
 - (1). Rights of action and defenses.

XIII. FISCAL MATTERS.(Cont'd)

- (1.1). Time to sue, limitations and laches.
- (1.5). Parties.
- (2). Pleading.
- (3). Evidence.
- (4). Trial and judgment.
- (D) TAXES AND OTHER REVENUE, AND APPLICATION THEREOF.
- 956. Power and duty to tax in general.
 - (1). In general.
 - (2). Limitation of rate or amount in general.
 - (3). Mode of taxation.
 - (4). Submission to popular vote.
- 957. Constitutional requirements and restrictions.
 - (.5). In general.
 - (1). Power to tax for general or special purposes in general.
 - (2). Delegation of power by Legislature.
 - (3). Limitations as to rate or amount, or property or persons taxable.
 - (4). Submission to voters, and levy, assessment, and collection.
- 958. Charter and other statutory provisions.
- 959. Power to tax for general municipal purposes.
- 960. Power to tax for special purposes.
- 961. — In general.
- 962. — Public improvements.
- 963. — Aid to corporations and subscriptions to or purchase of stock.
- 964. — Payment of indebtedness.
- 965. — Sinking funds.
- 966. Persons and property taxable.
 - (1). In general.
 - (2). Property outside of city limits.
 - (3). Property of nonresidents in general.
 - (4). Annexed territory and agricultural and unplatted lands.
 - (5). Money and choses in action.
 - (6). Bank stock and property.
 - (7). Railroad property.
 - (8). Bridge and water companies.
 - (9). Property taxable by state.
- 967. Exemptions from taxation.

268. MUNICIPAL CORPORATIONS

XIII. FISCAL MATTERS.(Cont'd)

- (1). In general.
- (2). Power to exempt in general.
- (3). Annexed territory and agricultural lands.
- (4). Railroad property.
- (5). Property of water and electric companies.
968. Proceedings for levy in general.
 - (.5). In general.
 - (1). Conditions precedent.
 - (2). Time of levy.
969. Ordinances or resolutions levying taxes.
 - (1). In general.
 - (2). Publication.
 - (3). Construction and operation.
 - (4). Certification and review.
970. Assessment of taxes.
971. — In general.
 - (1). In general.
 - (2). Authority and duty to make assessment.
 - (3). Assessment of omitted property.
 - (4). Defects and irregularities.
972. — Mode of assessment.
 - (1). In general.
 - (2). Basis of assessment.
 - (3). Description, ownership, and valuation.
 - (4). Statement or list by taxpayer.
 - (5). Verification, certification, and warrant.
 - (6). Publication and deposit for inspection.
973. — Conclusiveness and effect.
974. — Review, correction, or setting aside.
 - (.5). In general.
 - (1). Authority to correct and grounds for correction.
 - (2). Mode of action and proceedings.
 - (3). Confirmation and review.
975. Lien of taxes.
976. Payment of taxes.
977. Refunding or recovery of tax paid.
978. Collection and enforcement of taxes in general.
 - (.5). In general.

XIII. FISCAL MATTERS.(Cont'd)

- (1). Collectors and proceedings for collection in general.
- (2). Contracts for collection of taxes.
- (3). Nature and form of remedy in general.
- (4). Sale of property.
- (5). Conditions precedent.
- (6). Rights of action and defenses.
- (7). Time to sue and limitations.
- (8). Parties.
- (9). Pleading and evidence.
- (10). Trial, judgment, and execution.
979. Remedies for wrongful collection of tax.
980. Sale or lease of land for nonpayment of tax.
 - (.5). In general.
 - (1). Power to sell and grounds for sale.
 - (2). Restraining or setting aside sale.
 - (3). Proceedings for and validity of sale or lease in general.
 - (4). Notice.
 - (5). Mode and conduct of sale and disposition of proceeds.
 - (6). Sale of the fee or for a term of years.
 - (7). Purchase by city.
 - (8). Quantity which may be sold.
 - (9). Rights and remedies of purchaser.
981. Redemption from tax sale.
982. Tax titles.
983. Forfeitures and penalties for nonpayment of tax.
984. Disposition for municipal purposes of taxes and other revenue.
985. — In general.
986. — Taxes for special purposes.

XIV. TAXPAYERS' SUITS AND OTHER REMEDIES.

987. Nature and scope in general.
988. Constitutional and statutory provisions.
989. Investigation of municipal finances.
990. Contesting validity of municipal ordinances or acts.
991. Restraining action by municipality or officers.
992. — In general.
993. — Unauthorized or illegal acts.
 - (1). In general.

269. NAMES

**XIV. TAXPAYERS' SUITS AND OTHER
REMEDIES.**(Cont'd)

- (2). Making and performance of unauthorized or illegal contracts.
- (3). Issuance or delivery of bonds.
- (4). Levy and disposition of taxes.
- 994. — Incurring indebtedness or expenditure.
- 995. — Misapplication of funds.
 - (1). In general.
 - (2). Payment of claims, bonds, or warrants.
- 996. — Waste or other disposition of or injury to property.
- 997. Compelling action by municipality or officers.
- 998. Intervention in actions by or against municipality.
- 999. Suing or defending on behalf of municipality.
- 1000. Actions.
 - (.5). In general.
 - (1). Abatement or dismissal of action and defenses.
 - (2). Conditions precedent in general.
 - (3). Requesting city officers to bring action.
 - (4). Parties.
 - (5). Pleading and evidence.
 - (6). Trial, judgment, and relief.
 - (7). Costs.

XV. CLAIMS AGAINST CORPORATION.

- 1001. Nature of claims required to be presented.
- 1002. Interest.
- 1003. Assignment.
- 1004. Auditing boards or officers.
- 1005. Time for presentation.
- 1006. Statement.
- 1007. Verification and proof.
- 1008. Presentation and filing.
- 1009. Authority to allow.
- 1010. Compromise.
- 1011. Arbitration.
- 1012. Audit or hearing.
- 1013. Decision.
- 1014. Review of decision.
- 1015. Effect of allowance or disallowance.

XVI. ACTIONS.

- 1016. Capacity to sue or be sued in general.
- 1017. Rights of action.
- 1018. Compromise and settlement of litigation.
- 1019. Conditions precedent.
- 1020. — In general.
- 1021. — Notice, demand or presentation of claim.
- 1023. Defenses.
- 1024. Jurisdiction and venue.
- 1025. Time to sue and limitations.
See also LIMITATION OF ACTIONS.
- 1026. Authority to sue in corporate name.
- 1027. Parties.
- 1028. Joinder or intervention in actions by others.
- 1029. Process.
- 1030. Appearance and representation by attorney.
- 1031. Attachment and garnishment.
- 1032. Injunction.
- 1033. Receiver.
- 1034. Pleading.
- 1035. Evidence.
- 1036. Trial.
- 1037. Judgment.
- 1038. Execution and enforcement of judgment.
- 1039. Appeal and error.
- 1040. Costs.

XVII. CRIMINAL RESPONSIBILITY.

- 1041. Nature and grounds in general.
- 1042. Particular offenses.
- 1043. Prosecutions.

269. NAMES

SUBJECTS INCLUDED

Appellations and designations of individuals

269. NAMES

Rights of a personal nature respecting their use

Change of name

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Changes of name incident to—

Adoption, see ADOPTION

Divorce, see DIVORCE

Nonmarital children, names of, see PARENT AND CHILD 123

Names of—

Associations, see ASSOCIATIONS, CORPORATIONS AND BUSINESS ORGANIZATIONS XV

Corporate bodies, see CORPORATIONS AND BUSINESS ORGANIZATIONS

Partnerships, see PARTNERSHIP

Property in names, see TRADEMARKS

1. Requisites and sufficiency.
2. — In general.
3. — Middle names.
4. — Prefixes and suffixes.
5. — Abbreviations.
6. — Initials.
7. — Derivations and corruptions.
8. Mode of conferring or acquiring.
9. — In general.
10. — Assumed names.
11. — Names in common use.
12. Distinction of sex.
14. Identity.
15. Distinguishing persons having same name.
16. Idem sonans.
 - (1). In general.
 - (2). Names within rule.
 - (3). Names not within rule.
17. Right to use.
18. Evidence.
19. Questions for jury.
20. Change.
21. Offenses in use of names.

271. NE EXEAT

SUBJECTS INCLUDED

Proceedings to prevent defendants in actions on demands of an equitable nature from departing or removing their property from the jurisdiction of the court, and to obtain equitable bail

Nature and scope of writs of ne exeat and similar remedies

In what cases and against whom such remedy is allowed, grounds for the writ, and jurisdiction over proceedings to obtain the writ, etc.

Requisites and sufficiency of the writ, bond, etc.

Execution of the writ

Dissolution of the writ, or discharge of the party from custody thereunder

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Arrest and bail in general, see ARREST, BAIL

Particular classes of actions, use of writ in, see ACCOUNT, DIVORCE

Review of decisions, see APPEAL AND ERROR

1. Nature and purpose of remedy.
2. Constitutional and statutory provisions.
3. Grounds.
4. Jurisdiction to issue.
5. Proceedings to procure.
6. — In general.
7. — Affidavits.
8. — Bond.
9. Issuance, form, and requisites.
10. Service, and custody of prisoner.
11. Equitable bail.
12. Vacating or discharge.
13. Return.
14. Liabilities on bonds.
15. Wrongful arrest or restraint.

272. NEGLIGENCE

272. NEGLIGENCE

SUBJECTS INCLUDED

General civil negligence law and premises liability, including duty, standards of care, breach of duty, proximate cause, injury, defenses, and comparative fault, whether based on the common law or statute, as well as procedural aspects of such actions

General civil liabilities for gross negligence, recklessness, willful or wanton conduct, strict liability and ultrahazardous instrumentalities and activities

Negligence liabilities relating to the construction, demolition and repair of buildings and other structures, whether based on the common law or statute

General criminal negligence offenses and prosecutions

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Accountants or auditors, negligence of, see ACCOUNTANTS ¶8, 9

Aircraft, accidents involving, see AVIATION ¶141–153

Asylums and assisted living facilities, see ASYLUMS AND ASSISTED LIVING FACILITIES

Attorneys' malpractice liability, see ATTORNEY AND CLIENT ¶105–129.5

Awards of compensatory or punitive damages for injuries to persons or property caused by negligence, see DAMAGES

Banks, liabilities of, see FINANCE, BANKING, AND CREDIT IV

Brokers, securities and real estate, liabilities of, see BROKERS

Car and highway accidents, see AUTOMOBILES

Child day care, injuries relating to, see INFANTS

Common carriers, liabilities to passengers, see CARRIERS

Domestic animals, injuries by or to, see ANIMALS

Dram Shop liability and other liabilities for serving alcohol, see INTOXICATING LIQUORS ¶282–324

Drugs, liabilities relating to manufacture, sale and dispensing of, see HEALTH ¶389, 706 and PRODUCTS LIABILITY ¶223

Educational institutions and personnel, liabilities of, see EDUCATION

Electricity-related injuries, see ELECTRICITY ¶12–19(13)

Elevators, liabilities of owners to passengers, see CARRIERS

Emotional distress, negligent infliction of, see DAMAGES III(A)2

Employers, liabilities for acts committed by their employees or for negligent hiring or retention of employees, see LABOR AND EMPLOYMENT XVIII

Employers, liabilities for injuries to their own employees, see LABOR AND EMPLOYMENT

Exculpatory clauses prospectively waiving negligence liability, see CONTRACTS ¶114, 189

Explosion, fireworks and blasting injuries, see EXPLOSIVES ¶6–12

Firearms, injuries inflicted with, see WEAPONS ¶361 et seq

Flooding others' lands or polluting others' water supply, see WATER LAW

Food, injuries caused by, see FOOD ¶25

Governments, negligence liability of, see COUNTIES, DISTRICT OF COLUMBIA, MUNICIPAL CORPORATIONS, STATES, TOWNS, TERRITORIES, and UNITED STATES

Homicide by negligence, see AUTOMOBILES and HOMICIDE

Hospitals, liabilities of, see HEALTH V

Hotels, motels, inns and boarding houses, liabilities of, see INNKEEPERS ¶10–11(12), 14.1

Insurers, liabilities of, see INSURANCE and WORKERS' COMPENSATION

Lease of personal property, liabilities relating to, see BAILMENT

Lease of real property, liabilities relating to, see LANDLORD AND TENANT

Manufacture, sale or distribution of products, liabilities relating to, see PRODUCTS LIABILITY and SALES

Maritime accidents and injuries, see ADMIRALTY, COLLISION, FERRIES, PILOTS, SALVAGE, SEAMEN, SHIPPING and WHARVES

Medical malpractice and liabilities of health care professionals in general, see HEALTH V and VI

272. NEGLIGENCE

Mines and quarries, injuries in excavation and operation of, see MINES AND MINERALS ¶118

Natural gas and propane, injuries from escape or explosion of, see GAS ¶14.50-20(6)

Negligence as measure of criminal intent generally, see CRIMINAL LAW ¶23

Negligent misrepresentation, see FRAUD ¶13(3)

Nursing homes, injuries in, see HEALTH

Pesticides, herbicides, and fertilizers in an agricultural context, liabilities involving, see AGRICULTURE

Railroads, liabilities to non-passengers, see RAILROADS and URBAN RAILROADS

Release from liability after injury, see RELEASE

Security personnel and private investigators, see DETECTIVES AND SECURITY GUARDS ¶4

Spoliation of evidence, see TORTS III(D)

Sports and public amusements, liabilities of proprietors, managers, and sponsors, see PUBLIC AMUSEMENT AND ENTERTAINMENT

Wrongful death actions, procedural aspects of, see DEATH

I. IN GENERAL, ¶200-205.

II. NECESSITY AND EXISTENCE OF DUTY, ¶210-222.

III. STANDARD OF CARE, ¶230-239.

IV. BREACH OF DUTY, ¶250-259.

V. HEIGHTENED DEGREES OF NEGLIGENCE, ¶272-276.

VI. VULNERABLE AND ENDANGERED PERSONS; RESCUES, ¶281-285.

VII. SUDDEN EMERGENCY DOCTRINE, ¶291-295.

VIII. DANGEROUS SITUATIONS AND STRICT LIABILITY, ¶301-307.

IX. TRADES, SPECIAL SKILLS AND PROFESSIONS, ¶321-323.

X. SPORTS, GAMES AND RECREATION, ¶331-333.

XI. FIRES, ¶341-344.

XII. NEGLIGENT ENTRUSTMENT, ¶351-355.

XIII. PROXIMATE CAUSE, ¶370-454.

XIV. NECESSITY AND EXISTENCE OF INJURY, ¶460-463.

XV. PERSONS LIABLE, ¶480-484.

XVI. DEFENSES AND MITIGATING CIRCUMSTANCES, ¶500-575.

XVII. PREMISES LIABILITY, ¶1000-1320.

(A) IN GENERAL, ¶1000-1004.

(B) NECESSITY AND EXISTENCE OF DUTY, ¶1010-1025.

(C) STANDARD OF CARE, ¶1030-1079.

(D) BREACH OF DUTY, ¶1085-1162.

(E) ATTRACTIVE NUISANCE DOCTRINE, ¶1172-1178.

(F) RECREATIONAL USE DOCTRINE AND STATUTES, ¶1191-1197.

(G) LIABILITIES RELATING TO CONSTRUCTION, DEMOLITION AND REPAIR, ¶1201-1205(10).

(H) STATUTORY CAUSES OF ACTION FOR POLICE AND FIRE-FIGHTERS, ¶1210.

(I) PROXIMATE CAUSE, ¶1220-1247.

(J) NECESSITY AND EXISTENCE OF INJURY, ¶1250-1251.

(K) PERSONS LIABLE, ¶1260-1269.

(L) DEFENSES AND MITIGATING CIRCUMSTANCES, ¶1280-1320.

XVIII. ACTIONS, ¶1500-1750.

(A) IN GENERAL, ¶1500-1508.

(B) PLEADING, ¶1510-1542.

(C) EVIDENCE, ¶1550-1685.

1. BURDEN OF PROOF, ¶1550-1573.

2. PRESUMPTIONS AND INFERENCES, ¶1575-1604.

3. RES IPSA LOQUITUR, ¶1610-1625.

4. ADMISSIBILITY, ¶1630-1642.

5. WEIGHT AND SUFFICIENCY, ¶1650-1685.

(D) QUESTIONS FOR JURY AND DIRECTED VERDICTS, ¶1691-1719.

(E) INSTRUCTIONS, ¶1720-1747.

(F) VERDICT AND FINDINGS, ¶1750.

XIX. CRIMINAL NEGLIGENCE, ¶1800-1809.

I. IN GENERAL.

Premises liability, see section XVII(A).

200. Nature.

201. Distinction or relationship between negligence and intentional conduct.

202. Elements in general.

203. Constitutional, statutory and regulatory provisions.

204. What law governs.

205. Preemption.

272. NEGLIGENCE

II. NECESSITY AND EXISTENCE OF DUTY.

Premises liability, see section XVII(B).

- 210. In general.
- 211. Public policy concerns.
- 212. Knowledge or notice.
- 213. Foreseeability.
- 214. Relationship between parties.
- 215. Balancing and weighing of factors.
- 216. Duty towards children.
- 217. Voluntarily assumed duty.
- 218. — In general.
- 219. — Contractual duty.
- 220. Protection against acts of third persons.
- 221. Duty to warn.
- 222. Duty based upon statute or other regulation.

III. STANDARD OF CARE.

Premises liability, see section XVII(C).

- 230. In general.
- 231. Due care.
- 232. Ordinary care.
- 233. Reasonable care.
- 234. Voluntarily assumed duties.
- 235. Things owned, controlled, supplied or repaired.
- 236. Custom or practice in general.
- 237. Care towards children.
- 238. Standard established by statute or regulation.
- 239. Intoxication or other impairment of defendant.

IV. BREACH OF DUTY.

Premises liability, see section XVII(D).

- 250. In general.
- 251. Knowledge or notice.
- 252. Miscellaneous particular cases.
- 253. Things owned, controlled, supplied or repaired.
- 254. Lack of or inadequate warning.
- 255. Protection against acts of third persons generally.
- 256. Injuries to children.
- 257. — In general.
- 258. — Protection against acts of third persons.
- 259. Violations of statutes and other regulations.

V. HEIGHTENED DEGREES OF NEGLIGENCE.

- 272. In general.
- 273. Gross negligence.
- 274. Reckless conduct.
- 275. Willful or wanton conduct.
- 276. Particular cases.

VI. VULNERABLE AND ENDANGERED PERSONS; RESCUES.

- 281. In general.
- 282. Duty in general.
- 283. Care required in general.
- 284. "Good Samaritan" doctrine and statutes.
- 285. Particular cases.

VII. SUDDEN EMERGENCY DOCTRINE.

- 291. In general; nature of emergency.
- 292. Adoption, existence or abolition of doctrine.
- 293. Self-created emergencies.
- 294. Care required.
- 295. Particular cases.

VIII. DANGEROUS SITUATIONS AND STRICT LIABILITY.

- 301. In general.
- 302. Knowledge of danger.
- 303. Elements of strict liability.
 - (1). In general.
 - (2). Custody or control.
 - (3). Defect, vice or unreasonable risk.
- 304. Miscellaneous particular strict liability.
- 305. Abnormally or inherently dangerous activities and instrumentalities.
- 306. Dangerous substances.
- 307. Dangerous objects and machinery.

IX. TRADES, SPECIAL SKILLS AND PROFESSIONS.

Excludes specific professions for which there are independent Key Number topics, e.g., ACCOUNTANTS, ATTORNEY AND CLIENT, BROKERS and HEALTH.

- 321. In general.
- 322. Care required in general.
- 323. Travel and tour professionals.

X. SPORTS, GAMES AND RECREATION.

Liabilities of proprietors, managers and sponsors, see PUBLIC AMUSEMENT AND ENTERTAINMENT.

- 331. In general.

272. NEGLIGENCE

X. SPORTS, GAMES AND RECREATION.(Cont'd)

- 332. Golf.
- 333. Baseball and softball.

XI. FIRES.

- 341. In general.
- 342. Fires accidentally started.
- 343. Spread of fires beyond intended limits.
- 344. Campfires, bonfires and cooking fires.

XII. NEGLIGENT ENTRUSTMENT.

- 351. In general.
- 352. Elements in general.
- 353. Control over object.
- 354. Knowledge of danger.
- 355. Particular cases.

XIII. PROXIMATE CAUSE.

Premises liability, see section XVII(I).

- 370. In general.
- 371. Necessity of causation.
- 372. Necessity of legal or proximate causation.
- 373. Necessity of and relation between factual and legal causation.
- 374. Requisites, definitions and distinctions.
- 375. — In general.
- 376. — Mixed considerations.
- 377. — Common sense and experience.
- 378. — Public policy considerations.
- 379. — "But-for" causation; act without which event would not have occurred.
- 380. — Substantial factor.
- 381. — Proximity and relation in general.
- 382. — Proximity in time or place.
- 383. — Remoteness and attenuation; mere condition or occasion.
- 384. — Continuous sequence; chain of events.
- 385. — Efficient or direct cause.
- 386. — Natural and probable consequences.
- 387. — Foreseeability.
- 400. Miscellaneous particular cases.
- 401. Things owned, controlled, supplied or repaired.
- 402. Injuries to children.
- 403. Vulnerable and endangered persons; rescues and emergencies.

XIII. PROXIMATE CAUSE.(Cont'd)

- 404. Dangerous instrumentalities and substances.
- 405. Strict liability.
- 406. Fires.
- 407. Negligent entrustment.
- 408. Protection against acts of third persons.
- 409. Violations of statutes or other regulations.
- 410. Failure to act; omissions.
- 411. — In general.
- 412. — Particular cases.
- 413. — Failure to warn or inadequate warning.
- 414. — Failure to inspect or inadequate inspection.
- 420. Concurrent causes.
- 421. — In general.
- 422. — Possibility of multiple causes.
- 423. — Effect of other causes on liability.
- 424. — Particular cases.
- 430. Intervening and superseding causes.
- 431. — In general; foreseeability of other cause.
- 433. — Intentional or criminal acts.
- 434. — Particular cases.
- 440. — Unavoidable or inevitable accident.
 - (1). In general.
 - (2). Act of God.
 - (3). Particular cases.
- 450. Plaintiff's fault as cause.
- 451. — In general.
- 452. — Necessity of causal connection.
- 453. — Requisites, definitions and distinctions.
- 454. — Particular cases.

XIV. NECESSITY AND EXISTENCE OF INJURY.

Premises liability, see section XVII(J).

- 460. In general.
- 461. Nature of injury.
- 462. Particular cases.
- 463. Economic loss doctrine.

XV. PERSONS LIABLE.

Premises liability, see section XVII(K).

- 480. In general.
- 481. Privity.
- 482. Aid and assistance.

272. NEGLIGENCE

XV. PERSONS LIABLE.(Cont'd)

- 483. Vicarious liability.
- 484. Joint and several liability.

XVI. DEFENSES AND MITIGATING CIRCUMSTANCES.

Premises liability, see section XVII(L).

- 500. In general.
- 501. Plaintiff's conduct or fault.
- 502. — In general.
 - (1). Nature and elements in general.
 - (2). Relation to defendant's conduct or fault.
 - (3). Miscellaneous particular cases.
- 503. — Care required in general.
- 504. — Foreseeability; cause to anticipate danger.
- 506. — Knowledge of danger.
 - (1). In general.
 - (2). Relative to that of defendant.
 - (3). Forgetfulness, inattention or distraction.
 - (4). Constructive knowledge.
 - (5). — In general; dangers that should be known.
 - (6). — Duty to look and observe.
 - (7). — Open and obvious dangers.
 - (8). Care required of persons with knowledge; avoidance of danger and voluntary exposure.
 - (9). Availability of alternatives.
- 510. — Emergency situations.
 - (1). In general.
 - (2). Self-created emergencies.
 - (3). Rescues.
 - (4). — In general.
 - (5). — Rescues of persons.
 - (6). — Saving of property.
- 520. — Intentional conduct and heightened degrees of negligence.
- 525. — Violations of law; criminal conduct.
- 530. — Injury avoidable notwithstanding contributory negligence; last clear chance, humanitarian and discovered peril doctrines.
 - (1). In general.
 - (2). Adoption, existence or abolition of doctrine.
 - (3). Particular cases.

XVI. DEFENSES AND MITIGATING CIRCUMSTANCES.(Cont'd)

- 535. — Diminished capabilities.
 - (1). In general.
 - (2). Age in general.
 - (3). Infants.
 - (4). — In general.
 - (5). — Capacity for contributory fault.
 - (6). — Care required in general.
 - (7). — Knowledge or obviousness of danger.
 - (8). — Particular cases.
 - (9). Advanced age.
 - (10). Illness and disability.
 - (11). — In general.
 - (12). — Physical condition.
 - (13). — Mental condition.
 - (14). Intoxication.
 - (15). Chemical dependency.
 - (16). Other particular conditions.
- 540. Fault of third persons.
- 545. Effect of others' fault.
- 546. — In general.
- 547. — As bar to recovery; contributory negligence doctrine.
- 549. — As grounds for apportionment; comparative negligence doctrine.
 - (1). In general.
 - (2). Adoption, existence or abolition of doctrine.
 - (3). Purpose of doctrine.
 - (4). Scope and application of doctrine.
 - (5). — In general; prerequisites.
 - (6). — Nature of conduct to which doctrine applies; what constitutes "fault".
 - (7). — Heightened degrees of negligence and intentional acts.
 - (8). — Whose acts or fault may be considered; non-parties.
 - (9). — Determination of relative fault.
 - (10). — Effect of determination on recovery; methods of apportionment.
 - (11). Particular cases and percentages.
- 550. Assumption of risk.
- 551. — In general.
- 552. — Existence as defense.

272. NEGLIGENCE

XVI. DEFENSES AND MITIGATING CIRCUMSTANCES.(Cont'd)

- (1). In general.
- (2). Willful, wanton or reckless conduct.
- (3). Actions based on statute or regulation.
- (4). Effect of comparative negligence.
- 553. — Relation to contributory negligence.
- 554.1. — Elements in general.
- 554.2. — Knowledge of danger.
- 554.3. — Voluntariness of action or consent.
- 554.4. — Primary assumption of risk.
- 554.5. — Secondary assumption of risk.
- 554.6. — Primary and secondary distinguished.
- 560. — Miscellaneous particular cases.
- 565. — Sports, games and recreation.
- 570. — Professional rescuers; "firefighter's rule".
- 575. Imputed contributory negligence.

XVII. PREMISES LIABILITY.

Injuries directly caused by fires, see section XI and §1178.

(A) IN GENERAL.

- 1000. Nature.
- 1001. Elements in general.
- 1002. Constitutional, statutory and regulatory provisions.
- 1003. What law governs.
- 1004. Preemption.

(B) NECESSITY AND EXISTENCE OF DUTY.

- 1010. In general.
- 1011. Ownership, custody and control.
- 1012. Conditions known or obvious in general.
- 1013. Conditions created or known by defendant.
- 1014. Foreseeability.
- 1015. Duty as to children.
- 1016. — In general.
- 1017. — Trespassing children.
- 1018. Duty to inspect or discover.
- 1019. Protection against acts of third persons in general.

XVII. PREMISES LIABILITY.(Cont'd)

- 1020. Duty to warn.
- 1021. Duty of store and business proprietors.
- 1022. — In general.
- 1023. — Duty to inspect.
- 1024. — Protection against acts of third persons.
- 1024.5. Off-premises injuries.
- 1024.6. — In general.
- 1024.7. — Adjacent public ways.
Defects in sidewalks or other public ways, see MUNICIPAL CORPORATIONS §808 and HIGHWAYS §199; automobile accidents, see AUTOMOBILES §269, 289.
- 1025. Duty based on statute or other regulation.

(C) STANDARD OF CARE.

- 1030. In general.
- 1031. Not insurer or guarantor.
- 1032. Reasonable or ordinary care in general.
- 1033. Reasonably safe or unreasonably dangerous conditions.
- 1034. Status of entrant.
- 1035. — In general.
- 1036. — Care dependent on status.
- 1037. — Invitees.
 - (1). In general.
 - (2). Who are invitees.
 - (3). Not insurer as to invitees.
 - (4). Care required in general.
 - (5). Public invitees in general.
 - (6). Implied invitation.
 - (7). Persons working on property.
Construction site injuries, see section XVII(G).
 - (8). Delivery persons and haulers.
- 1040. — Licensees.
 - (1). In general.
 - (2). Who are licensees.
 - (3). Care required in general.
- 1041. — Social guests.
- 1045. — Trespassers.
 - (1). In general.
 - (2). Who are trespassers.
 - (3). Care required in general.
 - (4). Knowledge, discovery or acquiescence.
- 1050. — Distinctions between types of entrants.
- 1051. — Relative degrees of care.

272. NEGLIGENCE

XVII. PREMISES LIABILITY.(Cont'd)

- 1052. — Change of status; exceeding scope of invitation or license.
- 1053. — Rejection of status distinctions.
- 1060. Police, firefighters and other public servants.
- 1065. Care as to children.
- 1066. — In general.
- 1067. — Trespassing children.
- 1070. Protection against acts of third persons generally.
- 1075. Care required of store and business proprietors.
- 1076. — In general.
- 1077. — Inspection and discovery.
- 1078. — Protection against acts of third persons.
- 1078.5. Off-premises injuries.
- 1078.6. — In general.
- 1078.7. — Adjacent public ways.

Covers conditions on the private property causing injury to persons on public ways. For conditions on or defects in the sidewalks or other public ways, see MUNICIPAL CORPORATIONS §808 and HIGHWAYS §199; for automobile accidents, see AUTOMOBILES §269, 289.

- 1079. Standard established by statute or other regulation.

(D) BREACH OF DUTY.

- 1085. In general.
- 1086. Defect or dangerous conditions generally.
- 1087. Knowledge or notice in general.
- 1088. — In general.
- 1089. — Constructive notice.
- 1090. Miscellaneous particular cases.
- 1095. Slips and falls in general.
- 1100. Buildings and structures.
- 1101. — In general.
- 1102. — Doors, entryways and exits.
- 1103. — Windows.
- 1104. — Floors.
 - (1). In general.
 - (2). Knowledge of condition or danger.
 - (3). Falls in general.
 - (4). Inequalities in surface.
 - (5). Rugs, carpets and mats.
 - (6). Water and other substances.
 - (7). Objects and debris.

XVII. PREMISES LIABILITY.(Cont'd)

- (8). Cleaning and waxing.
- 1110. — Steps, stairs and ramps.
 - (1). In general.
 - (2). Substances and objects.
 - (3). Handrails.
- 1115. — Walls and paint.
- 1116. — Roofs and ceilings.
- 1117. — Elevators and escalators.

Liabilities of owners to passengers, see CARRIERS.
- 1118. — Decks, balconies and patios.
- 1119. — Furniture, shelves, displays, carts and other accessories.
- 1125. Exterior grounds in general.
- 1126. Private walkways and paths.
- 1127. Parking lots and driveways.
- 1128. Trees.
- 1129. Swimming pools.
- 1130. Bodies of water and beaches.
- 1131. Snow and ice.
- 1140. Excavations, holes, drop-offs and shafts.
- 1141. Ladders and scaffolds.
- 1150. Off-premises injuries.
- 1151. — In general.
- 1152. — Adjacent public ways.

Defects in sidewalks or other public ways, see MUNICIPAL CORPORATIONS §808 and HIGHWAYS §199; automobile accidents, see AUTOMOBILES §269, 289.

- 1160. Protection against acts of third persons.
- 1161. — In general.
- 1162. — Store and business proprietors.

(E) ATTRACTIVE NUISANCE DOCTRINE.

- 1172. In general.
- 1173. Adoption, existence or abolition of doctrine.
- 1174. Persons to whom applicable.
- 1175. Things constituting attractive nuisances in general.
- 1176. Particular cases.
- 1177. Pools and other bodies of water.
- 1178. Fires and flammables.

(F) RECREATIONAL USE DOCTRINE AND STATUTES.

- 1191. In general.
- 1192. Purpose of doctrine or statute.
- 1193. Construction of statutes in general.
- 1194. Property, conditions, activities and persons covered.

272. NEGLIGENCE

XVII. PREMISES LIABILITY.(Cont'd)

- 1195. Charges and fees for use.
- 1196. Duties and care required.
- 1197. Willful or malicious acts; gross negligence.

(G) LIABILITIES RELATING TO CONSTRUCTION, DEMOLITION AND REPAIR.

- 1201. In general.
- 1202. Defects in buildings and structures in general.
 - (1). In general.
 - (2). Design defects.
 - (3). Construction defects.
- 1204. Accidents and injuries in general.
 - (1). In general.
 - (2). Covering or guarding dangerous places.
 - (3). Elevated work in general.
 - (4). Safe workplace laws.
 - (5). — In general.
 - (6). — Scaffolding laws.
 - (7). — Structural work laws.
 - (8). — Frequenter laws.
- 1205. Liabilities of particular persons other than owners or occupiers.
 - (1). In general.
 - (2). Developers and builders.
 - (3). Lenders, financiers and mortgagees.

Non-construction-related liabilities, see ¶1268.

- (4). Architects, designers, and planners.
- (5). Engineers.
- (6). Contractors.
- (7). — In general.
- (8). — Accepted work doctrine.
- (9). Subcontractors.
- (10). Material and equipment suppliers.

(H) STATUTORY CAUSES OF ACTION FOR POLICE AND FIREFIGHTERS.

- 1210. In general.

(I) PROXIMATE CAUSE.

- 1220. In general.
- 1221. Necessity of causation.
- 1222. Necessity of legal or proximate cause.
- 1223. Requisites, definitions and distinctions.

XVII. PREMISES LIABILITY.(Cont'd)

- 1224. Failure to act or warn; omissions in general.
- 1225. Miscellaneous particular cases.
- 1226. Slips and falls in general.
- 1227. Buildings and structures.
- 1228. — In general.
- 1229. — Floors; slips and falls.
- 1230. — Steps, stairs and ramps.
- 1231. — Elevators and escalators.
- 1232. Private walkways and paths.
- 1233. Parking lots and driveways.
- 1234. Pools, bodies of water and beaches.
- 1235. Snow and ice.
- 1236. Excavations, holes, drop-offs and shafts.
- 1237. Off-premises injuries.
- 1238. Protection against acts of third persons.
- 1239. Violations of statutes and other regulations in general.
- 1240. Liabilities relating to construction, demolition and repair.
- 1241. Concurrent causes.
- 1242. Intervening and superseding causes.
- 1243. Plaintiff's fault as cause.
- 1244. — In general.
- 1245. — Necessity of causal connection.
- 1246. — Requisites, definitions and distinctions.
- 1247. — Particular cases.

(J) NECESSITY AND EXISTENCE OF INJURY.

- 1250. In general.
- 1251. Particular cases.

(K) PERSONS LIABLE.

- 1260. In general.
- 1261. Privity in general.
- 1262. Prior owners.
- 1263. Vendors.
- 1264. Purchasers.
- 1265. Easement holders.
- 1266. Franchisers.
- 1267. Operators and managers.
- 1268. Lenders, financiers and mortgagees.
Construction-related injuries and liabilities, see ¶1205(3).
- 1269. Joint and several liability.

(L) DEFENSES AND MITIGATING CIRCUMSTANCES.

- 1280. In general.

272. NEGLIGENCE

XVII. PREMISES LIABILITY.(Cont'd)

- 1281. Plaintiff's conduct or fault.
- 1282. — In general.
- 1283. — Care required.
 - (1). In general.
 - (2). Invitees.
 - (3). — In general.
 - (4). — Store and business visitors.
 - (5). Licensees.
 - (6). Trespassers.
- 1284. — Foreseeability; cause to anticipate danger.
- 1286. — Knowledge of danger.
 - (1). In general.
 - (2). Relative to that of defendant.
 - (3). Forgetfulness, inattention or distraction.
 - (4). Constructive knowledge.
 - (5). — In general; dangers that should be known.
 - (6). — Duty to look and observe.
 - (7). — Open and obvious dangers.
 - (8). Care required of persons with knowledge; avoidance of danger and voluntary exposure.
 - (9). Availability of alternatives.
- 1287. — Miscellaneous particular cases.
- 1288. — Slips and falls in general.
- 1289. — Buildings and structures.
- 1290. — Pools and bodies of water.
- 1291. — Exterior grounds.
 - (1). In general.
 - (2). Private walkways and paths.
 - (3). Parking lots and driveways.
 - (4). Snow and ice.
- 1292. — Injuries inflicted by third persons.
- 1293. — Rescues and emergencies.
- 1294. — Intentional conduct and heightened degrees of negligence.
- 1295. — Violations of law; criminal conduct.
- 1296. — Liabilities relating to construction, demolition and repair.
- 1297. — Injury avoidable notwithstanding contributory negligence; last clear chance, humanitarian and discovered peril doctrines.
- 1298. — Diminished capabilities.
 - (1). In general.

XVII. PREMISES LIABILITY.(Cont'd)

- (2). Age.
 - (3). Illness and disability.
 - (4). Intoxication and chemical dependency.
- 1300. Fault of third persons.
- 1301. Effect of others' fault.
- 1302. — In general.
- 1303. — As bar to recovery; contributory negligence.
- 1304. — As grounds for apportionment; comparative negligence.
- 1310. Assumption of risk.
- 1311. — In general.
- 1312. — Existence as defense.
- 1313. — Elements.
- 1314. — Particular cases.
- 1315. — Professional rescuers; "firefighter's rule".
- 1320. Imputed contributory negligence.

XVIII. ACTIONS.

(A) IN GENERAL.

- 1500. In general.
- 1501. Nature and form of remedy.
- 1502. Right of action; standing.
- 1503. Grounds and conditions precedent.
- 1504. — In general.
- 1505. — Notice.
- 1506. — Affidavit or certification of expert.
- 1507. Time to sue and limitations.
 - See also LIMITATION OF ACTIONS.*
- 1507.1. — In general.
- 1507.2. — Professional negligence or malpractice.
- 1507.3. — Premises liability.
- 1508. Parties.

(B) PLEADING.

- 1510. In general.
- 1511. Complaint.
- 1512. — In general.
- 1513. — Elements of negligence.
 - (1). In general.
 - (2). Duty.
 - (3). Injury.
- 1514. — Res ipsa loquitur.
- 1515. — Miscellaneous particular cases.

272. NEGLIGENCE

XVIII. ACTIONS.(Cont'd)

- 1516. — Heightened degrees of negligence.
- 1517. — Rescues and emergencies.
- 1518. — Dangerous situations and substances; strict liability.
- 1519. — Trades, special skills and professions.
- 1520. — Sports, games and recreation.
- 1521. — Fires.
- 1522. — Negligent entrustment.
- 1523. — Violations of statutes and other regulations.
- 1524. — Premises liability.
 - (1). In general.
 - (2). Slips and falls in general.
 - (3). Buildings and other structures.
 - (4). Pools and bodies of water.
 - (5). Liabilities relating to construction, demolition and repair.
- 1525. — Protection against acts of third persons.
- 1526. — Proximate cause.
- 1527. — Defenses and mitigating circumstances.
 - (1). In general.
 - (2). Fault of plaintiff or third persons.
 - (3). Effect of others' fault; comparative negligence.
 - (4). Assumption of risk.
- 1528. Answer.
- 1529. — In general.
- 1530. — Defenses in general.
- 1531. — Fault of plaintiff or third persons.
- 1532. — Effect of others' fault; comparative negligence.
- 1533. — Assumption of risk.
- 1535. Further pleadings.
- 1536. Issues, proof and variance.
- 1537. — In general.
- 1538. — Pleading general issue, allegation or denial.
- 1539. — Pleading specific or multiple acts.
- 1540. — Heightened degrees and intentional acts.
- 1541. — Defenses and mitigating circumstances; contributory and comparative fault.
- 1542. — Other particular cases.

(C) EVIDENCE.

1. BURDEN OF PROOF.

- 1550. In general.
- 1551. Multiple defendants.
- 1552. Miscellaneous particular cases.
- 1553. Heightened degrees of negligence.
- 1554. Rescues and emergencies.
- 1555. Dangerous situations and substances; strict liability.
- 1556. Trades, special skills and professions.
- 1557. Sports, games and recreation.
- 1558. Fires.
- 1559. Negligent entrustment.
- 1560. Violations of statutes and other regulations.
- 1561. Premises liability.
- 1562. — In general.
- 1563. — Slips and falls in general.
- 1564. — Buildings and other structures.
- 1565. — Pools and bodies of water.
- 1566. — Liabilities relating to construction, demolition and repair.
- 1567. Protection against acts of third persons.
- 1568. Proximate cause.
- 1569. Defenses and mitigating circumstances.
- 1570. — In general.
- 1571. — Fault of plaintiff or third persons.
- 1572. — Effect of others' fault; comparative negligence.
- 1573. — Assumption of risk.

2. PRESUMPTIONS AND INFERENCES.

- 1575. In general.
- 1576. Degree of proof; certainty or speculation.
- 1577. Presumption as to exercise of care.
- 1578. Negligence not presumed.
- 1579. Happening of accident or injury.
- 1580. Knowledge, notice or awareness.
- 1581. Custody or control.
- 1582. Warnings.
- 1583. Miscellaneous particular cases.
- 1584. Heightened degrees of negligence.
- 1585. Rescues and emergencies.
- 1586. Dangerous situations and substances; strict liability.
- 1587. Trades, special skills and professions.
- 1588. Sports, games and recreation.
- 1589. Fires.

272. NEGLIGENCE

XVIII. ACTIONS.(Cont'd)

- 1590. Negligent entrustment.
- 1591. Violations of statutes and other regulations.
- 1592. Premises liability.
- 1593. — In general.
- 1594. — Slips and falls in general.
- 1595. — Buildings and other structures.
- 1596. — Pools and bodies of water.
- 1597. — Liabilities relating to construction, demolition and repair.
- 1598. Protection against acts of third persons.
- 1599. Proximate cause.
- 1600. Defenses and mitigating circumstances.
- 1601. — In general.
- 1602. — Fault of plaintiff or third persons.
- 1603. — Effect of others' fault; comparative negligence.
- 1604. — Assumption of risk.

3. RES IPSA LOQUITUR.

- 1610. In general.
- 1611. Elements or conditions of application.
- 1612. — In general.
- 1613. — Nature and character of accident or injury.
- 1614. — Control or management of instrumentality.
- 1615. — Defendant's superior knowledge or means of knowledge.
- 1616. — Absence or unavailability of direct evidence.
- 1617. — Cause of injury, and parties' relation thereto.
- 1618. Operation and effect of doctrine.
- 1619. — In general.
- 1620. — Creation of inference or presumption.
- 1621. — Burden of proof or going forward.
- 1622. — Sufficiency and effect of rebuttal evidence.
- 1624. Application of doctrine; effect of pleadings.
- 1625. Particular cases.

4. ADMISSIBILITY.

Excludes evidence of subsequent remedial measures, see EVIDENCE §219.10.

- 1630. In general.

XVIII. ACTIONS.(Cont'd)

- 1631. Custom and usage.
- 1632. Safety codes, standards and guidelines.
- 1633. Contracts and contract provisions.
- 1634. Intoxication.
- 1635. Similar facts and transactions; other accidents.
- 1636. Miscellaneous particular cases.
- 1637. Heightened degrees of negligence.
- 1638. Violations of statutes and other regulations in general.
- 1639. Premises liability.
- 1640. Protection against acts of third persons.
- 1641. Proximate cause.
- 1642. Defenses and mitigating circumstances; contributory and comparative fault.

5. WEIGHT AND SUFFICIENCY.

- 1650. In general.
- 1651. Degree of proof.
- 1652. — In general.
- 1653. — Preponderance of evidence.
- 1654. — Substantial evidence.
- 1655. — Conjecture or speculation.
- 1656. Direct or circumstantial evidence in general.
- 1657. Necessity of expert testimony.
- 1658. Miscellaneous particular cases.
- 1659. Heightened degrees of negligence.
- 1660. Rescues and emergencies.
- 1661. Dangerous situations and substances; strict liability.
- 1662. Trades, special skills and professions.
- 1663. Sports, games and recreation.
- 1664. Fires.
- 1665. Negligent entrustment.
- 1666. Violations of statutes and other regulations.
- 1667. Premises liability.
- 1668. — In general.
- 1669. — Slips and falls in general.
- 1670. — Buildings and other structures.
- 1671. — Pools and bodies of water.
- 1672. — Liabilities relating to construction, demolition and repair.
- 1673. Protection against acts of third persons.
- 1674. Proximate cause.
- 1675. — In general; degrees of proof.
- 1676. — Direct or circumstantial evidence.

272. NEGLIGENCE

XVIII. ACTIONS.(Cont'd)

- 1677. — Miscellaneous particular cases.
- 1678. — Fires.
- 1679. — Premises liability.
- 1680. — Liabilities relating to construction, demolition and repair.
- 1681. Defenses and mitigating circumstances.
- 1682. — In general.
- 1683. — Fault of plaintiff or third persons.
 - (1). In general.
 - (2). Standard or degree of proof, in general.
 - (3). Direct or circumstantial evidence, in general.
 - (4). Miscellaneous particular cases.
 - (5). Premises liability.
 - (6). — In general.
 - (7). — Slips and falls in general.
 - (8). — Buildings and other structures.
 - (9). — Pools and bodies of water.
 - (10). — Liabilities relating to construction, demolition, and repair.
 - (11). Fires.
 - (12). Last clear chance.
- 1684. — Effect of others' fault; comparative negligence.
 - (1). In general.
 - (2). Miscellaneous particular cases.
 - (3). Premises liability.
- 1685. — Assumption of risk.
 - (1). In general.
 - (2). Miscellaneous particular cases.
 - (3). Premises liability.

(D) QUESTIONS FOR JURY AND DIRECTED VERDICTS.

- 1691. In general.
- 1692. Duty as question of fact or law generally.
- 1693. Negligence as question of fact or law generally.
- 1694. Standard of proof; evidentiary showing required.
- 1695. Res ipsa loquitur.
- 1696. Miscellaneous particular cases.
- 1697. Heightened degrees of negligence.
- 1698. Rescues and emergencies.

XVIII. ACTIONS.(Cont'd)

- 1699. Dangerous situations and substances; strict liability.
- 1700. Trades, special skills and professions.
- 1701. Sports, games and recreation.
- 1702. Fires.
- 1703. Negligent entrustment.
- 1704. Violations of statutes and other regulations.
- 1705. Premises liability.
- 1706. — In general.
- 1707. — Slips and falls in general.
- 1708. — Buildings and other structures.
- 1709. — Pools and bodies of water.
- 1710. — Liabilities relating to construction, demolition and repair.
- 1711. Protection against acts of third persons.
- 1712. Proximate cause.
- 1713. — In general.
- 1714. — Particular cases.
- 1715. Defenses and mitigating circumstances.
- 1716. — In general.
- 1717. — Fault of plaintiff or third persons.
 - (1). In general.
 - (2). Miscellaneous particular cases.
 - (3). Premises liability.
 - (4). — In general.
 - (5). — Slips and falls in general.
 - (6). — Buildings and other structures.
 - (7). — Pools and bodies of water.
 - (8). — Liabilities relating to construction, demolition, and repair.
 - (9). Fires.
 - (10). Last clear chance.
- 1718. — Effect of others' fault; comparative negligence.
- 1719. — Assumption of risk.

(E) INSTRUCTIONS.

- 1720. In general.
- 1721. Presumptions and burden of proof.
- 1722. — In general.
- 1723. — Res ipsa loquitur.
- 1724. Miscellaneous particular cases.
- 1725. Heightened degrees of negligence.
- 1726. Rescues and emergencies.
- 1727. Dangerous situations and substances; strict liability.

274. NEWSPAPERS

XVIII. ACTIONS.(Cont'd)

- 1728. Trades, special skills and professions.
- 1729. Sports, games and recreation.
- 1730. Fires.
- 1731. Negligent entrustment.
- 1732. Violations of statutes and other regulations.
- 1733. Premises liability.
- 1734. — In general.
- 1735. — Slips and falls in general.
- 1736. — Buildings and other structures.
- 1737. — Pools and bodies of water.
- 1738. — Liabilities relating to construction, demolition and repair.
- 1739. Protection against acts of third persons.
- 1740. Proximate cause.
- 1741. — In general.
- 1742. — Particular cases.
- 1743. Defenses and mitigating circumstances.
- 1744. — In general.
- 1745. — Fault of plaintiff or third persons.
 - (1). In general.
 - (2). Miscellaneous particular cases.
 - (3). Premises liability.
 - (4). — In general.
 - (5). — Slips and falls in general.
 - (6). — Buildings and other structures.
 - (7). — Pools and bodies of water.
 - (8). — Liabilities relating to construction, demolition, and repair.
 - (9). Fires.
 - (10). Last clear chance.
- 1746. — Effect of others' fault; comparative negligence.
- 1747. — Assumption of risk.

(F) VERDICT AND FINDINGS.

- 1750. In general.

XIX. CRIMINAL NEGLIGENCE.

Negligence as general standard of criminal intent, see CRIMINAL LAW ¶23.

- 1800. In general.
- 1801. Constitutional, statutory and regulatory provisions.
- 1802. Offenses in general.
- 1804. Prosecutions.
- 1805. — In general.

XIX. CRIMINAL NEGLIGENCE.(Cont'd)

- 1806. — Indictment and information.
- 1807. — Evidence.
- 1808. — Trial.
 - (1). In general.
 - (2). Questions for jury.
 - (3). Instructions.
- 1809. — Sentence and punishment.

273. NEUTRALITY LAWS

SUBJECTS INCLUDED

Breach of neutrality or of other international obligations by hostile acts of private persons against a foreign nation at peace with the United States

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Belligerents' rights, see WAR AND NATIONAL EMERGENCY

Violation of privileges of foreign ambassadors and ministers, see AMBASSADORS AND CONSULS

- 1. Power to punish hostile acts against foreign nations.
- 2. Statutory provisions.
- 3. Nature and elements of offenses.
- 4. Forfeitures of vessels and enforcement thereof.
- 5. Criminal prosecutions.

274. NEWSPAPERS

SUBJECTS INCLUDED

Periodicals designated or employed to publish laws or other public acts, proceedings, etc.,

274. NEWSPAPERS

or notices or advertisements relating to judicial or other official proceedings, whether for information of the public or as notice to individuals

Official appointment or designation or other selection of newspapers for such purposes

Compensation for making such publications, contracts therefor, and rights and liabilities in respect thereof

News associations or agencies

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Contempt, publication of reports of judicial proceedings constituting, see CONTEMPT

Libels, publication of, see LIBEL AND SLANDER

Notice, effect of publication in newspaper as, see NOTICE and specific topics

Process, service by publication, see PROCESS

1. Appointment or designation of official papers.

(.5). In general.

(1). Authority or duty to designate and effect of designation.

(2). Statutory provisions.

(3). Newspapers which may be designated.

(4). Mode and validity of appointment or designation.

(5). Review of proceedings.

(6). Duration of appointment.

2. Contracts with public bodies or officers.

3. Requirements of statutes and ordinances as to publication.

(1). In general.

(2). Character of newspaper and determination thereof in general.

(3). Place of printing or issue.

(4). Frequency of issue.

(5). Circulation.

(6). Language.

4. Orders of court for publication of notices or advertisements in judicial proceedings.

5. Compensation for publication.

(1). In general.

(2). Amount.

6. Proof of publication.

6.1. Rights, duties, and liabilities.

6.5. Regulation and offenses.

7. News associations and agencies.

275. NEW TRIAL

SUBJECTS INCLUDED

Judicial re-examination by the same tribunals of issues in civil cases after trial and determination thereof by courts, sitting with or without a jury, or by referees

Nature and scope of the remedy in general

Grounds for new trials, as matter of right or as matter of discretion

Jurisdiction to grant and proceedings to obtain new trials

Proceedings at new trials

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Criminal cases, new trials in, see CRIMINAL LAW

Federal courts, new trials in, see FEDERAL CIVIL PROCEDURE

Justices of the peace, new trials before, see JUSTICES OF THE PEACE

Referees, recommitment of causes to, see REFERENCE

Rehearings in—

Admiralty, see ADMIRALTY

Equity, see EQUITY

Review, necessity and effect of motion for new trial for purposes of, review of decisions granting or refusing new trials, and decisions on appeal, etc., remanding causes for new trials, see APPEAL AND ERROR

I. NATURE AND SCOPE OF REMEDY, ¶0.5-12.

II. GROUNDS, ¶13-108.

(A) ERRORS AND IRREGULARITIES IN GENERAL, ¶13-27.

(B) MISCONDUCT OF PARTIES, COUNSEL, OR WITNESSES, ¶28-32.

(C) RULINGS AND INSTRUCTIONS AT TRIAL, ¶33-41.

275. NEW TRIAL

II. GROUNDS—Cont'd

- (D) DISQUALIFICATION OR MISCONDUCT OF OR AFFECTING JURY, ¶42–56.
 - (E) IRREGULARITIES OR DEFECTS IN VERDICT OR FINDINGS, ¶57–64.
 - (F) VERDICT OR FINDINGS CONTRARY TO LAW OR EVIDENCE, ¶65–81.
 - (G) SURPRISE, ACCIDENT, INADVERTENCE, OR MISTAKE, ¶82–98.
 - (H) NEWLY DISCOVERED EVIDENCE, ¶99–108.
- III. PROCEEDINGS TO PROCURE NEW TRIAL, ¶109–168.
- IV. PROCEEDINGS AT NEW TRIAL, ¶169–175.
- V. STATUTORY NEW TRIAL AS OF RIGHT, ¶176–188.

I. NATURE AND SCOPE OF REMEDY.

- 0.5. Nature and scope of remedy in general.
- 1. Power and duty of court in general.
 - 2. Causes in which new trial is authorized.
 - 3. Condition of cause in general.
 - 4. Effect of entry of judgment.
 - 5. Existence of or resort to other remedy.
 - 6. Discretion of court.
 - 7. Right to new trial in general.
 - 8. New trial as to one or more co-parties.
 - 9. New trial as to part of issues.
 - 10. Estoppel, waiver, or agreements affecting right.
 - 11. Successive applications.
 - (1). In general.
 - (2). Limitation as to number of new trials.
 - 12. Operation and effect of application.

II. GROUNDS.

(A) ERRORS AND IRREGULARITIES IN GENERAL.

- 13. Failure of justice in general.
- 14. Nature and theory of cause.
- 15. Parties.
- 16. Process.
- 17. Motions and other interlocutory proceedings.
- 18. Pleadings.
- 19. Mode of trial.
- 20. Proceedings preliminary to trial.

II. GROUNDS.(Cont'd)

- 21. Conduct of trial in general.
- 22. Irregularities or misconduct of officers.
- 23. Rendition of decision.
- 24. Form and entry of judgment.
- 25. Effect of change in law subsequent to trial.
- 26. Necessity of objection.
- 27. Harmless error.

(B) MISCONDUCT OF PARTIES, COUNSEL, OR WITNESSES.

- 28. Conduct of party.
- 29. Conduct of counsel.
- 30. Conduct of witness.
- 31. Necessity of objection.
- 32. Harmless error.

(C) RULINGS AND INSTRUCTIONS AT TRIAL.

- 33. Rulings ground for application in general.
- 34. Motions for continuance.
- 35. Reception of evidence.
- 36. Arguments and conduct of counsel.
- 37. Rulings on incidental questions and matters.
- 38. Submission of case or questions to jury.
- 39. Instructions.
 - (1). In general.
 - (2). Discretion of court.
 - (3). Inapplicable instructions.
 - (4). Particular actions or issues.
 - (4.1). — In general.
 - (5). — Negligence and torts in general.
 - (6). — Automobile cases.
- 39.5. Failure or refusal to instruct.
 - (1). In general.
 - (2). Particular actions or issues.
- 40. Necessity of objection and exception at trial.
 - (1). In general.
 - (2). Reception of evidence.
 - (3). Submission of case or questions to jury.
 - (4). Instructions and failure or refusal to instruct.
- 41. Harmless error.
 - (1). In general.
 - (2). Reception of evidence.

275. NEW TRIAL

II. GROUNDS.(Cont'd)

- (3). Instructions or failure or refusal to instruct.

(D) DISQUALIFICATION OR MISCONDUCT OF OR AFFECTING JURY.

42. Disqualification of jurors.
 (1). In general.
 (2). Bias or prejudice and formation or expression of opinion.
 (3). Prior service as juror.
 (4). Relationship to or connection with party, counsel, or person interested.
43. Mistake as to identity of juror.
44. Misconduct of jurors in general.
 (1). In general.
 (2). Statements and expressions of opinion during trial.
 (3). Consideration of matters not in evidence.
 (4). View or inspection and investigations by jurors.
45. Use of intoxicating liquors.
46. Separation.
47. Communications by or with jurors.
48. Misconduct of others affecting jury.
- 48.1. — In general.
49. — Parties or counsel.
50. — Officers.
51. — Bystanders.
52. Manner of arriving at verdict.
53. Necessity of objection at trial.
- 53.1. — In general.
54. — Knowledge or means of knowledge of facts.
55. — Failure to object.
56. Effect as to result.

(E) IRREGULARITIES OR DEFECTS IN VERDICT OR FINDINGS.

57. Rendition and reception of verdict.
58. Verdict in general.
59. Special verdict and findings.
60. Inconsistent findings.
61. Decision and findings of court.
62. Report and findings of referee.
63. Necessity of objection or exception.
64. Harmless error.

(F) VERDICT OR FINDINGS CONTRARY TO LAW OR EVIDENCE.

65. Power and duty of court in general.
66. Verdict contrary to law or instructions.
67. Verdict contrary to evidence.
68. — In general.
- 68.1. — Contrary verdict in general.
- 68.2. — Discretion.
- 68.3. — Verdict opposed to opinion of court.
- 68.4. — Particular actions or issues.
 (1). In general.
 (2). Contracts.
 (3). Torts.
 (4). — In general.
 (5). — Negligence.
 (6). — Automobile cases.
69. — Credibility of witnesses.
70. — Sufficiency of evidence.
71. — Conflicting evidence.
72. — Weight of evidence.
 (1). In general.
 (2). Weighing evidence as court function.
 (3). Discretion of court.
 (4). Preponderance of evidence.
 (5). Clear, great or overwhelming, or manifest weight or preponderance.
 (6). Verdict supported by evidence; conflicting evidence.
 (7). Particular actions or issues.
 (7.1). — In general.
 (8). — Contracts.
 (9). — Negligence and torts in general.
 (10). — Automobile cases.
73. Special findings by jury.
74. Amount of recovery in general.
75. Inadequate damages.
 (1). In general.
 (2). Nature of action in general.
 (3). Actions on contracts.
 (4). Actions for personal injuries.
 (5). Actions for death.
 (6). Actions for libel and slander.
76. Excessive damages.
 (1). In general.
 (2). Nature of action in general.
 (3). Actions on contracts.

275. NEW TRIAL

II. GROUNDS.(Cont'd)

- (4). Actions for personal injuries.
- (5). Actions for death.
- (6). Actions for libel and slander.
- 77. Mistake, passion, or prejudice of jurors.
 - (1). In general.
 - (2). Excessive damages in general.
 - (3). Actions for libel and slander.
 - (4). Inadequate damages.
- 78. Successive verdicts.
 - (1). In general.
 - (2). Statutory restrictions.
 - (3). Amount of recovery.
- 79. Decision and findings of court.
- 80. Report and findings of referee.
- 81. Necessity of objection or exception.

(G) SURPRISE, ACCIDENT, INADVERTENCE, OR MISTAKE.

- 82. Power and duty of court in general.
- 83. Amendment of pleading.
- 84. Notice and time or place of trial or hearing.
- 85. Absence or disability of party.
- 86. Absence or withdrawal of counsel.
- 87. Incompetency or neglect of counsel.
- 88. Absence of witness or evidence.
- 89. Evidence in general.
- 90. Testimony and conduct of witness.
- 91. Inadvertence or mistake of party or counsel.
- 92. Rulings and instructions.
- 93. Making bill of exceptions, case, or statement of facts.
- 94. Accident or defect not attributable to party.
- 95. Prudence and diligence in guarding against surprise or accident.
- 96. Diligence in averting consequences.
- 97. Necessity of objection or application for relief at trial.
- 98. Effect as to result.

(H) NEWLY DISCOVERED EVIDENCE.

- 99. Power and duty of court in general.
- 100. Nature of evidence discovered.
- 101. Time of discovery.
- 102. Diligence in procuring evidence.
 - (5). In general.
 - (1). Necessity for diligence.

II. GROUNDS.(Cont'd)

- (2). Cumulative and impeaching evidence.
- (3). Sufficiency of showing of diligence in general.
- (4). Search for witnesses.
- (5). Interviewing or examining witnesses.
- (6). Efforts to obtain documents or books and inspection thereof.
- (7). Matters of record.
- (8). Failure to apply for continuance or other relief.
- (9). Excuses for lack of diligence.
- 103. Relevancy, materiality, and competency.
- 104. Cumulative evidence.
 - (1). In general.
 - (2). What constitutes in general.
 - (3). Nature of action or issue and character of evidence.
- 105. Impeachment of witness.
- 106. Conflicting, contradicted, or contradicting evidence.
- 107. Credibility.
- 108. Sufficiency and probable effect.
 - (1). In general.
 - (2). Nature of action or issue and character of evidence in general.
 - (3). Actions on contract.
 - (4). Actions for personal injuries.
 - (5). Extent of injury and amount of recovery.

III. PROCEEDINGS TO PROCURE NEW TRIAL.

- 109. Mode and form in general.
- 110. New trial on court's own motion.
- 111. Parties entitled to apply.
- 112. Joint applications.
- 113. Jurisdiction of application.
- 114. Court or judge to which application may be made.
- 115. Time for application.
- 116. — In general.
 - 116.1. — What constitutes trial.
 - 116.2. — Commencement of time.
 - 116.3. — Compliance with requirements.
- 117. — Limitations as to time or term of court.

275. NEW TRIAL

III. PROCEEDINGS TO PROCURE
NEW TRIAL.(Cont'd)

- (1). In general.
- (2). Premature application.
- (3). Limitations as to term of court.
- 118. — Extension of time.
- 119. — Effect of delay or laches.
- 120. — Excuses for delay.
- 121. — Stipulations as to time and waiver of objections to delay.
- 122. Parties on application.
- 124. Requisites of motion in general.
 - (1). In general.
 - (2). Setting out evidence and instructions.
- 125. Statement of grounds in general.
- 126. Specification of errors.
- 126.1. — In general.
- 127. — Necessity.
- 128. — Requisites and sufficiency in general.
 - (1). In general.
 - (2). Reception of evidence.
 - (3). Submission of questions to jury and instructions.
 - (4). Disqualification or misconduct of or affecting jury.
 - (5). Verdict or findings contrary to law or evidence.
 - (6). Amount of recovery.
- 129. — Including errors in one assignment.
- 130. — Scope and effect.
- 131. Bill of exceptions, case, or statement of facts.
 - (1). In general.
 - (2). Requisites and sufficiency in general.
 - (3). Incorporating evidence.
 - (4). Settlement and allowance.
 - (5). Time for settlement, filing, and service.
 - (6). Extension of time and waiver of objections to delay.
 - (7). Amendment and striking from files.
 - (8). Compelling allowance or settlement and proceedings for settlement.
- 132. Brief, report, or transcript of evidence.
 - (.5). In general.

III. PROCEEDINGS TO PROCURE
NEW TRIAL.(Cont'd)

- (1). Necessity.
- (2). Requisites and sufficiency.
- (3). Time for filing or approval and waiver of objections to delay.
- (4). Approval and revocation thereof.
- 133. Minutes of court or judge.
- 134. Stenographer's report.
- 135. Notice of motion or of intention to apply.
- 135.1. — In general.
- 136. — Necessity.
- 137. — Form and requisites.
- 138. — Service.
- 139. — Waiver of notice or of defects.
- 140. Affidavits and extrinsic evidence in general.
 - (1). In general.
 - (2). Counter affidavits.
 - (3). Grounds of motion.
- 141. Affidavits and testimony of jurors.
- 142. — In general.
- 143. — Impeachment of verdict.
 - (1). In general.
 - (2). Misconduct of or affecting jurors.
 - (3). Assent to verdict.
 - (4). Mistake or inadvertence.
 - (5). Manner of arriving at verdict and computing damages.
- 144. — Sufficiency and effect, and counter affidavits.
- 145. Evidence as to statements of jurors.
- 146. Affidavits as to surprise, accident, or mistake.
- 146.1. — In general.
- 147. — Necessity and sufficiency in general.
- 148. — Counter affidavits.
- 149. Affidavits as to newly discovered evidence.
- 149.1. — In general.
- 150. — Necessity and sufficiency in general.
 - (.5). In general.
 - (1). Necessity.
 - (2). Requisites and sufficiency in general.
 - (3). Nature of evidence.
 - (4). Time of discovery and diligence.

276. NOTARIES

III. PROCEEDINGS TO PROCURE NEW TRIAL.(Cont'd)

151. — Counter affidavits.
152. Amendment of motion or affidavits.
153. Filing motion, notice, and affidavits.
154. Dismissal or abandonment.
155. Time for hearing and decision.
156. Continuance or postponement.
157. Hearing.
158. Rehearing.
159. Determination in general.
160. Grant of new trial ineffectual or not beneficial.
161. Conditions on granting or refusing new trial.
 - (1). In general.
 - (2). Payment of costs, expenses, and attorney fees in general.
 - (3). Nature of grounds.
 - (4). Performance or breach of condition.
162. Remission or reduction of excess of recovery.
 - (1). In general.
 - (2). Excess of amount claimed.
 - (3). Unliquidated damages and effect of passion or prejudice.
 - (4). Interest.
 - (5). Offer to remit and compliance with order.
163. Order granting or refusing new trial.
 - (1). In general.
 - (2). Construction and operation.
 - (3). Objections and exceptions.
164. Order for judgment instead of new trial.
165. Vacating or setting aside order on motion for new trial.
166. Petition after term of court, and proceedings thereon.
 - (1). In general.
 - (2). Time for filing.
 - (3). Petition.
 - (4). Trial.
167. Actions for new trial.
 - (5). In general.
 - (1). Nature and scope of remedy.
 - (2). Grounds.
 - (3). Proceedings.
168. Application to appellate court and proceedings thereon.

IV. PROCEEDINGS AT NEW TRIAL.

169. Preliminary proceedings.
170. Scope of inquiry and powers of court.
171. Amendment of pleadings and other proceedings.
172. Effect of proceedings at former trial.
173. Mode and conduct of trial in general.
174. Reception of evidence.
175. Questions for jury.

V. STATUTORY NEW TRIAL AS OF RIGHT.

176. Nature of right.
177. Statutory provisions.
178. Causes in which new trial is authorized.
 - (5). In general.
 - (1). Actions involving title and right to possession of real property in general.
 - (2). Actions to quiet title.
 - (3). Actions for partition.
 - (4). Actions for cancellation of instruments.
 - (5). Actions to enforce trusts.
 - (6). Joinder of causes of action or defenses.
179. Nature of trial or proceeding.
180. Parties entitled to new trial.
181. Waiver of right.
182. Right to successive new trials.
183. Proceedings to procure new trial.
184. Conditions and performance thereof.
185. — In general.
186. — Payment of costs.
187. — Payment of damages.
188. Proceedings at new trial.

276. NOTARIES

SUBJECTS INCLUDED

Notaries public
Their appointment, qualification, and tenure of office
Their rights, powers, duties, and liabilities in general

276. NOTARIES

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Particular acts and proceedings by notaries, see **ACKNOWLEDGMENT, AFFIDAVITS, BILLS AND NOTES**, and other specific topics

1. Nature and existence of office.
2. Appointment, qualification, and tenure.
3. Compensation.
4. Jurisdiction, powers, and functions.
5. Deputies, and delegation of powers.
6. Acts and proceedings in general.
8. Seal.
9. Certificates and records in general.
10. Liabilities for negligence or misconduct.
11. Liabilities on official bonds.

277. NOTICE

SUBJECTS INCLUDED

Knowledge or information of facts, and means of information and constructive knowledge equivalent in legal effect to actual knowledge

Communication, by private act or by public authority, of information or warning of facts or of acts intended or required to be done

Nature of actual notice, express or implied, and of constructive notice

What constitutes notice or charges with notice in general

Necessity of notice and waiver thereof

Requisites of formal notice in general

Modes of giving or serving formal notice, and sufficiency thereof

Offenses of defacing, destroying, or removing public notices

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Attorneys, agents, partners, corporate officers, etc., effect of notice to, see **ATTORNEY AND CLIENT, PRINCIPAL AND AGENT, PARTNERSHIP, CORPORA-**

TIONS AND BUSINESS ORGANIZATIONS, and other specific topics

Good faith of purchasers, priority of mortgages, etc., notice as affecting, see **VENDOR AND PURCHASER, SALES, BILLS AND NOTES, MORTGAGES AND DEEDS OF TRUST, CHATTEL MORTGAGES, SECURED TRANSACTIONS**

Judicial notice of facts, see **EVIDENCE, CRIMINAL LAW**

Newspapers officially designated for publication of notices, designation of and their compensation, see **NEWSPAPERS**

Particular facts, acts, and proceedings, notice of, see specific topics

Pendency of action, notice of, see **LIS PENDENS**

Recording instruments in writing to constitute constructive notice, see **RECORDS**

Suit—

Notice and demand before, see **ACTION, CONVERSION AND CIVIL THEFT, REPLEVIN**, and topics relating to other particular forms and causes of action

Notice of, see **PROCESS**

1. Nature in general.
- 1.5. Actual notice.
- 1.6. — In general.
2. — Knowledge or express notice.
3. — Implied notice.
4. Constructive notice.
5. — In general.
6. — Facts putting on inquiry.
7. Necessity.
8. Waiver.
9. Requisites and sufficiency of formal notice in general.
10. Service in general.
11. Notice by publication.
12. Operation and effect in general.
13. Pleading.
14. Evidence.
15. Questions for jury.
16. Defacing, destroying, or removing public notices.

278. NOVATION

SUBJECTS INCLUDED

Substitution for and in discharge of an existing pecuniary obligation

Nature, requisites, sufficiency, and effect of such novation

Pleading novation and proof thereof

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Modification of contracts, see **CONTRACTS**, and topics relating to particular classes of contracts

Statute of frauds, requirements of, see **FRAUDS, STATUTE OF**

1. Nature and requisites in general.
2. Subject-matter.
3. Discharge of existing obligation as consideration.
4. Substitution of new obligation between same parties.
5. Substitution of new debtor.
6. Substitution of new creditor.
7. Assent of parties.
8. Validity.
9. Performance of substituted agreement.
10. Operation and effect.
11. Pleading.
12. Evidence.
13. Questions for jury and instructions.

279. NUISANCE

SUBJECTS INCLUDED

Use of property or rights and personal conduct causing material annoyance, inconvenience, or injury to others, in respect of health, safety, comfort, sense of decency, morals, or exercise of their rights

Nature and extent of liability for such injuries in general

Civil remedies therefor

Criminal responsibility for public nuisances and purprestures

Prosecution and punishment thereof as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Landlord or tenant, liabilities in respect of demised premises, see **LANDLORD AND TENANT**

Municipal bodies, powers of, see **MUNICIPAL CORPORATIONS, ZONING AND PLANNING**

Obstruction of—

Highways, streets, etc., see **HIGHWAYS, MUNICIPAL CORPORATIONS**

Navigation, see **WATER LAW**

Particular classes of offenses of the nature of nuisances, see **DISORDERLY HOUSE, GAMING**, and other specific topics

Watercourses, obstruction, diversion, pollution, etc., see **WATER LAW**

- I. PRIVATE NUISANCES, ¶1-58.
 - (A) NATURE OF INJURY, AND LIABILITY THEREFOR, ¶1-10.
 - (B) ACQUISITION OF RIGHTS BY PRESCRIPTION, ¶11-17.
 - (C) ABATEMENT AND INJUNCTION, ¶18-40.
 - (D) ACTIONS FOR DAMAGES, ¶41-58.
- II. PUBLIC NUISANCES, ¶59-96.
 - (A) NATURE OF INJURY, AND LIABILITY THEREFOR, ¶59-70.
 - (B) RIGHTS AND REMEDIES OF PRIVATE PERSONS, ¶71-76.
 - (C) ABATEMENT AND INJUNCTION, ¶77-88.
 - (D) CRIMINAL PROSECUTIONS, ¶89-96.

I. PRIVATE NUISANCES.

(A) NATURE OF INJURY, AND LIABILITY THEREFOR.

1. Nature and elements of private nuisance in general.
2. Intent.
3. What constitutes nuisance in general.
 - (1). In general.
 - (2). Necessities of business and public convenience or utility in general.

279. NUISANCE

I. PRIVATE NUISANCES.(Cont'd)

- (3). Noise and pollution of atmosphere in general.
- (4). Water-closets, stables, and out-houses.
- (5). Mills, foundries, and other establishments.
- (6). Explosives and combustibles.
- (7). Undertaking establishments and burial grounds.
- (8). Hospitals, asylums, and pesthouses.
- (9). Games and entertainments.
- (10). Keeping and slaughter of animals.
- (11). Livery stables and garages.
- (12). Fences.
4. Nature and extent of injury or danger.
5. Exercise of legal right.
6. Acts authorized or prohibited by public authority.
7. Care and precautions against annoyance or injury.
8. Similar annoyances or injuries from other causes.
9. Persons creating or causing nuisance.
10. Persons continuing nuisance.

(B) ACQUISITION OF RIGHTS BY PRESCRIPTION.

11. Rights which may be acquired.
12. Against whom rights may be acquired.
13. As to what property rights may be acquired.
14. Extent of user.
15. Duration and continuity of user.
16. Adverse character of user.
17. Operation and effect.

(C) ABATEMENT AND INJUNCTION.

18. Nature of remedy.
19. Nuisances subject to abatement or injunction.
20. Abatement by act of person injured.
21. Grounds for proceedings for abatement.
22. Grounds for injunction.
23. — In general.
 - (1). In general.
 - (2). Adequacy of remedy at law.
 - (3). Determination of right at law.

I. PRIVATE NUISANCES.(Cont'd)

- (4). Notice to person maintaining nuisance.
24. — Mandatory injunction.
25. Defenses.
 - (1). In general.
 - (2). Injury or inconvenience to defendant.
26. Persons entitled to maintain proceedings.
27. Persons against whom proceedings may be brought.
28. Jurisdiction and venue.
29. Time to sue, limitations, and laches.
30. Parties.
31. Preliminary or temporary injunction.
32. Pleading.
33. Evidence.
34. Trial or hearing.
35. Relief awarded.
36. Judgment or decree, and enforcement thereof in general.
37. Mode and extent of abatement.
38. Violation of injunction, and punishment thereof.
39. Appeal.
40. Costs.

(D) ACTIONS FOR DAMAGES.

41. Nature and form of remedy.
42. Grounds of action and conditions precedent.
43. Defenses.
44. Persons entitled to sue.
45. Jurisdiction and venue.
46. Time to sue and limitations.
See also LIMITATION OF ACTIONS.
47. Parties.
48. Pleading.
49. Evidence.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility in general.
 - (3). Similar matters and transactions.
 - (4). Extent of injury or damage.
 - (5). Weight and sufficiency.
50. Damages.
 - (.5). In general.
 - (1). Elements and measure of damages in general.

280. OATH

I. PRIVATE NUISANCES.(Cont'd)

- (2). Diminution of rental or salable value.
- (3). Damages accruing after commencement of action.
- (4). Prospective damages.
- (5). Mitigation and reduction of loss.
- (6). Exemplary damages.
- (7). Amount of damages.
- 51. Trial.
- 52. — In general.
- 53. — Questions for jury.
- 54. — Instructions.
- 55. — Verdict and findings.
- 56. Judgment and execution.
- 57. Order for abatement of nuisance.
- 58. Appeal and error.

II. PUBLIC NUISANCES.

(A) NATURE OF INJURY, AND LIABILITY THEREFOR.

- 59. Nature and elements of public nuisance in general.
- 60. Provisions of statutes and ordinances.
- 61. Matters constituting public nuisances in general.
- 62. Public annoyance, injury, or danger.
- 63. Purprestures and other encroachments on public property or rights.
- 64. Exercise of legal right.
- 65. Acts authorized or prohibited by public authority.
- 66. Effect of prescription.
- 67. Care and precautions against annoyance or injury.
- 68. Similar annoyances or injuries from other causes.
- 69. Persons creating or causing nuisance.
- 70. Persons continuing nuisance.

(B) RIGHTS AND REMEDIES OF PRIVATE PERSONS.

- 71. Nature and grounds of liability to individuals.
- 72. Special annoyance, injury, or danger to individuals.
- 73. Prescription as against individuals.
- 74. Abatement by act of person injured.
- 75. Actions for abatement or injunction.
- 76. Actions for damages.

(C) ABATEMENT AND INJUNCTION.

- 77. Nature of remedy.
- 78. Abatement by act of public authorities.
- 79. Grounds for proceedings for abatement.
- 80. Grounds for injunction.
- 81. Defenses.
- 82. Persons by or against whom proceedings may be brought.
- 83. Summary remedies.
- 84. Actions.
- 85. Mode and extent of abatement.
- 86. Violation of injunction, and punishment thereof.
- 87. Appeal.
- 88. Costs and expenses.

(D) CRIMINAL PROSECUTIONS.

- 89. Persons entitled to prosecute.
- 90. Preliminary proceedings.
- 91. Indictment or information.
 - (1). In general.
 - (2). Issues, proof, and variance.
- 92. Evidence.
- 93. Trial.
- 95. Sentence and punishment.
- 96. Order for abatement of nuisance on conviction.

280. OATH

SUBJECTS INCLUDED

Solemn declarations or affirmations, with or without invocation of or appeal to God or other especial sanction, made in verification of averments, testimony, or promises to perform the duties of a trust or office

Nature and necessity of making oath

Administering, making, form, requisites, and sufficiency of such oaths and other affirmations in general

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

False swearing, see PERJURY

Oath or affirmation of—

280. OATH

Arbitrators, see ALTERNATIVE DISPUTE RESOLUTION

Jurors, see JURY

Witnesses, see WITNESSES

Qualification for office or position of trust, see PUBLIC EMPLOYMENT, and topics relating to particular officers, TRUSTS, EXECUTORS AND ADMINISTRATORS and other specific topics

Profane swearing, see CRIMINAL LAW
⌚45.20

Verification of—

Affidavits, see AFFIDAVITS

Pleadings, see PLEADING, FEDERAL CIVIL PROCEDURE

1. Nature and functions in general.
2. Authority to administer.
3. Mode of administration.
4. Affirmation or other substitute.
5. Making and sufficiency.
6. Evidence of taking.

281. OBSCENITY

SUBJECTS INCLUDED

Lewd or immodest acts, conduct, or language, offensive to the public sense of decency or to the public morals, in general

Publicly exhibiting or disseminating objects, publications, or representations of lewd or indecent character, and publishing obscene libels

Nature and elements of the crimes of indecent exposure, using obscene language, dealing in indecent articles or publications, etc., and obscene libel

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts, as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Forfeitures for violation of customs laws, see CUSTOMS DUTIES

Freedom of expression, constitutional guaranty of, see CONSTITUTIONAL LAW

Indecent assaults, see ASSAULT AND BATTERY

Mailing obscene matter, see POSTAL SERVICE

Profane swearing, see CRIMINAL LAW
⌚45.20

Regulation of adult businesses, see also PUBLIC AMUSEMENT AND ENTERTAINMENT and ZONING AND PLANNING

Use of minors to produce obscene material and dissemination of obscene materials to minors, see INFANTS

I. IN GENERAL, ⌚100–119.

II. OFFENSES IN GENERAL, ⌚120–149.

III. PUBLICATIONS, PHOTOGRAPHS, AND VIDEOS, ⌚150–199.

IV. PROSECUTION, ⌚200–249.

V. SENTENCE AND PUNISHMENT, ⌚250–269.

VI. SEARCHES AND SEIZURES, ⌚270–299.

VII. FORFEITURE AND DESTRUCTION OF OBSCENE MATTER, ⌚300–301.

I. IN GENERAL.

100. In general.

101. Definitions; test for obscenity.

102. — In general.

103. — Sex and nudity.

104. — Prurient interest.

105. — Contemporary community standards.

106. — Absence of serious value when taken as a whole.

107. Constitutional, statutory, and regulatory provisions.

108. — In general.

109. — Purpose.

110. — Construction and operation.

111. — Power to regulate.

112. — Validity of statutes, ordinances, and regulations.

(1). In general.

(2). Lewdness in general.

(3). Indecent exposure.

(4). Obscene language.

(5). Exhibitions and performances.

281. OBSCENITY

I. IN GENERAL.(Cont'd)

- (6). Physical articles deemed obscene, possession and sale of.
- (7). Publications in general.
- (8). Photographs and videos in general.
- (9). Depiction of minors; child pornography.
- 113. — Retroactive operation.
- 114. — Concurrent and conflicting statutes and regulations.
 - (1). In general.
 - (2). Preemption.
- 115. — What law governs.

II. OFFENSES IN GENERAL.

- 120. In general.
- 121. Elements in general.
- 122. — In general.
- 123. — Knowledge or intent.
- 124. Lewdness in general.
- 125. Indecent exposure.
- 126. — In general.
- 127. — Public place.
- 128. — Knowledge or intent.
- 129. Obscene language.
- 130. Exhibitions and performances.
- 131. Physical articles deemed obscene, possession and sale of.
- 132. Attempts.
- 133. Defenses.
- 134. Parties to crime; aiding and abetting.

III. PUBLICATIONS, PHOTOGRAPHS, AND VIDEOS.

- 150. In general.
- 151. Publications in general.
- 152. — In general.
- 153. — Knowledge or intent.
- 154. — Possession.
 - (1). In general.
 - (2). What constitutes possession.
 - (3). Knowledge or intent.
 - (4). Interstate commerce.
- 155. — Receiving.
 - (1). In general.
 - (2). Knowledge or intent.
 - (3). Interstate commerce.

III. PUBLICATIONS, PHOTOGRAPHS, AND VIDEOS.(Cont'd)

- 156. — Sale, transportation, or distribution.
 - (1). In general.
 - (2). Knowledge or intent.
 - (3). Interstate commerce.
- 157. — Advertising.
- 158. Photographs and videos in general.
- 159. — In general.
- 160. — Knowledge or intent.
- 161. — Possession.
 - (1). In general.
 - (2). What constitutes possession.
 - (3). Knowledge or intent.
 - (4). Interstate commerce.
 - (5). Electronic transmission; internet.
- 162. — Receiving.
 - (1). In general.
 - (2). Knowledge or intent.
 - (3). Interstate commerce.
 - (4). Electronic transmission; internet.
- 163. — Sale, transportation, or distribution.
 - (1). In general.
 - (2). Knowledge or intent.
 - (3). Interstate commerce.
 - (4). Electronic transmission; internet.
- 164. — Advertising.
- 165. Depictions of minors; child pornography.
- 166. — In general.
- 167. — Knowledge or intent.
- 168. — Depiction of actual child; virtual or computer-generated images.
- 169. — Possession.
 - (1). In general.
 - (2). What constitutes possession.
 - (3). Knowledge or intent.
 - (4). Interstate commerce.
 - (5). Number or amount of obscene material.
 - (6). Electronic transmission; internet.
- 170. — Receiving.
 - (1). In general.
 - (2). Knowledge or intent.
 - (3). Interstate commerce.
 - (4). Electronic transmission; internet.

281. OBSCENITY

III. PUBLICATIONS, PHOTOGRAPHS, AND VIDEOS.(Cont'd)

- 171. — Sale, transportation, or distribution.
 - (1). In general.
 - (2). Knowledge or intent.
 - (3). Interstate commerce.
 - (4). Internet or other electronic transmission.
- 172. — Advertising.
- 173. — Recordkeeping and disclosure.
- 174. Attempts.
- 175. Defenses.
- 176. Parties to crime; aiding and abetting.

IV. PROSECUTION.

- 200. In general.
- 201. Indictment, information, presentment, or complaint.
- 202. — In general.
- 203. — Requisites and sufficiency in general.
- 204. — Setting out or describing obscene matter.
- 205. — Issues, proof, and variance.
- 206. Evidence.
- 207. — In general.
- 208. — Presumptions and burden of proof.
- 209. — Admissibility.
- 210. — Weight and sufficiency.
 - (1). In general.
 - (2). Lewdness in general.
 - (3). Indecent exposure.
 - (4). Obscene language.
 - (5). Exhibitions and performances.
 - (6). Physical articles deemed obscene, possession and sale of.
 - (7). Publications in general.
 - (8). Photographs and videos in general.
 - (9). Depiction of minors; child pornography.
 - (10). — In general.
 - (11). — Depiction of actual child; virtual or computer-generated images.
 - (12). — Possession.
 - (13). — Receiving.
 - (14). — Sale or distribution.
 - (15). — Attempts.

IV. PROSECUTION.(Cont'd)

- (16). — Parties to crime; aiding and abetting.
- 211. Trial.
- 212. — In general.
- 213. — Questions for jury.
 - (1). In general.
 - (2). Lewdness in general.
 - (3). Indecent exposure.
 - (4). Obscene language.
 - (5). Exhibitions and performances.
 - (6). Physical articles deemed obscene, possession and sale of.
 - (7). Publications in general.
 - (8). Photographs and videos in general.
 - (9). Depiction of minors; child pornography.
 - (10). Attempts.
 - (11). Parties to crime; aiding and abetting.
- 214. — Instructions.
 - (1). In general.
 - (2). Lewdness in general.
 - (3). Indecent exposure.
 - (4). Obscene language.
 - (5). Exhibitions and performances.
 - (6). Physical articles deemed obscene, possession and sale of.
 - (7). Publications in general.
 - (8). Photographs and videos in general.
 - (9). Depiction of minors; child pornography.
 - (10). Attempts.
 - (11). Parties to crime; aiding and abetting.

V. SENTENCE AND PUNISHMENT.

- 250. In general.
- 251. Lewdness in general.
- 252. Indecent exposure.
- 253. Obscene language.
- 254. Exhibitions and performances.
- 255. Physical articles deemed obscene, possession and sale of.
- 256. Publications in general.
- 257. Photographs and videos in general.

282. OBSTRUCTING JUSTICE

V. SENTENCE AND PUNISHMENT.(Cont'd)

- 258. Depiction of minors; child pornography.
- 259. Attempts.

VI. SEARCHES AND SEIZURES.

- 270. In general.
- 271. Seizure, suppression, or censorship in general.
- 272. Warrantless searches.
- 273. — In general.
- 274. — Expectation of privacy.
 - (1). In general.
 - (2). Computers; electronic transmission.
- 275. — Probable cause.
 - (1). In general.
 - (2). Particular cases.
- 276. — Exigent circumstances.
- 277. — Plain view.
- 278. — Scope of search.
- 279. Warrants.
- 280. — In general.
- 281. — Proceedings for issuance.
- 282. — Probable cause in general.
 - (1). In general.
 - (2). Particular cases.
- 283. — Competency of information.
 - (1). In general.
 - (2). Informants.
- 284. — False information; omissions.
- 285. — Time for application.
 - (1). In general.
 - (2). Staleness.
 - (3). Anticipatory warrant.
- 286. — Form and contents of warrant.
 - (1). In general.
 - (2). Particularity; overbreadth in general.
 - (3). Objects or information sought.
 - (4). Places, persons, or objects to be searched.
 - (5). Effect of errors.
- 287. — Execution of warrant.
 - (1). In general.
 - (2). Time of execution.
 - (3). Scope of search or seizure.
- 288. Adversary hearing.
- 289. — In general.
- 290. — Necessity.

VI. SEARCHES AND SEIZURES.(Cont'd)

- 291. — Conduct of hearing.
- 292. — Evidence.
- 293. — Determination.
- 294. Disposition of property seized.

VII. FORFEITURE AND DESTRUCTION OF OBSCENE MATTER.

- 300. In general.
- 301. Proceedings.

282. OBSTRUCTING JUSTICE

SUBJECTS INCLUDED

Resisting or obstructing or intimidating an officer or other duly authorized person in the execution of process, civil or criminal, or performance of other official act or duty

Preventing witnesses from attending or testifying, suppressing evidence, and other acts defeating, impeding, or delaying the administration of justice, public or private, not constituting a distinct offense

Attempts to commit such acts

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Assaults and homicides committed upon or by officers making arrests, etc., see ASSAULT AND BATTERY, HOMICIDE

Escape and rescue of prisoners, see ESCAPE, RESCUE

Officers, misconduct and neglect of, see PUBLIC EMPLOYMENT, SHERIFFS AND CONSTABLES and other specific topics

- 100. In general.
- 101. Constitutional, statutory, and regulatory provisions.
- 102. — In general.
- 103. — Purpose.
- 104. — Validity.
- 105. — Construction.

282. OBSTRUCTING JUSTICE

- 106. — Retroactive operation.
- 107. Nature and elements of offense in general.
- 108. — In general.
- 109. — Knowledge or intent.
- 110. — Necessity of actual obstruction.
- 111. — Nature of proceedings.
 - (1). In general.
 - (2). Grand jury proceedings.
 - (3). Administrative proceedings.
- 112. Failure to act.
- 113. — In general.
- 114. — Failure to assist victim.
- 115. — Failure to report crime.
- 116. Prevention of notification to law enforcement.
- 117. Interfering with performance of official duties.
- 118. — In general.
- 119. — Fleeing, evading, or eluding; failure to stop.
- 120. — Making false report or accusation.
- 121. — Providing false name or other information to officer.
- 122. — Failure to obey command or comply with request of officer; failure to assist.
- 123. — Intimidating or threatening officer.
- 124. — Resisting or obstructing execution of process in general.
- 125. — Resisting search.
 - (1). In general.
 - (2). Legality of search.
- 126. — Resisting arrest or detention.
 - (1). In general.
 - (2). Knowledge and intent.
 - (3). What constitutes resistance; force or violence.
 - (4). Legality of arrest.
 - (5). Resistance by third parties.
- 127. — Interference with firefighters or emergency medical personnel.
- 128. Offenses relating to evidence in general.
- 129. — In general.
- 130. — Tampering in general.
- 131. — Falsifying or altering evidence.
- 132. — Concealing or withholding evidence.
- 133. — Destroying evidence.
- 134. Offenses relating to witnesses or potential witnesses.
- 135. — In general.
- 136. — Tampering in general.
- 137. — Threatening or intimidating in general.
- 138. — Preventing testimony.
 - (1). In general.
 - (2). Witness homicide.
- 139. — Influencing testimony; procuring false testimony.
- 140. — Refusal to testify.
- 141. — Giving false testimony.
- 142. — Retaliating against witness.
- 143. Influencing juror or court officer.
- 144. Harboring fugitive.
- 145. — In general.
- 146. — Registered sex offender.
- 147. Misprision of a felony.
- 148. — In general.
- 149. — Seriousness of crime concealed.
- 150. — Knowledge of commission of crime concealed.
- 151. Concealing birth or death.
- 152. Compounding offenses.
- 153. — In general.
- 154. — Conduct constituting hampering prosecution.
- 155. — Knowledge of commission of, or seriousness of, crime.
- 156. Attempts.
- 157. — In general.
- 158. — Particular crimes.
- 159. Degrees.
- 160. Defenses.
- 161. Parties to crime; aiding and abetting.
- 162. Indictment, information, presentment, or complaint.
- 163. — In general.
- 164. — Requisites and sufficiency.
 - (1). In general.
 - (2). Interfering with performance of official duties.
 - (3). Resisting arrest.
 - (4). Offenses relating to evidence in general.
 - (5). Offenses relating to witnesses or potential witnesses.
- 165. Issues, proof, and variance.
- 166. Evidence.
- 167. — In general.
- 168. — Presumptions and burden of proof.

284. PARDON AND PAROLE

- 169. — Admissibility.
- 170. — Weight and sufficiency.
 - (1). In general.
 - (2). Failure to act.
 - (3). Interfering with performance of official duties.
 - (4). Resisting execution of search warrant.
 - (5). Resisting arrest.
 - (6). Offenses relating to evidence.
 - (7). Offenses relating to witnesses or potential witnesses.
 - (8). Harboring fugitive.
 - (9). Misprision of a felony.
 - (10). Compounding offenses.
 - (11). Attempts.
 - (12). Parties to crime; aiding and abetting.
- 171. Trial.
- 172. — In general.
- 173. — Questions for jury.
- 174. — Instructions.
 - (1). In general.
 - (2). Interfering with performance of official duties.
 - (3). Resisting arrest.
 - (4). Offenses relating to evidence in general.
 - (5). Offenses relating to witnesses or potential witnesses.
- 175. — Verdict.
- 176. Sentence and punishment.
- 177. — In general.
- 178. — Interfering with performance of official duties.
- 179. — Resisting arrest.
- 180. — Offenses relating to evidence in general.
- 181. — Offenses relating to witnesses or potential witnesses.

284. PARDON AND PAROLE

SUBJECTS INCLUDED

Grants of exemption from punishment for crime committed, by general pardon or am-

nesty as well as in individual cases, and whether absolute or conditional, and, more particularly, remissions of the whole or part of the sentence imposed, reprieves from execution of the sentence, commutation of the punishment to a lower grade or lesser amount, and paroles

Nature and scope of pardoning and parole powers in general

Constitutional and statutory provisions relating thereto

In what cases and to whom and for what offenses pardons, paroles, etc., are allowed

Authority to grant and proceedings to obtain pardons, paroles, etc.

Issuance, requisites, validity, construction and effect of instruments of pardon, parole, reprieve, commutation of sentence, etc., and effect of conditions therein

Pleading pardons, paroles, etc., and proof thereof by way of defense

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Juveniles and youthful offenders, parole of, see INFANTS

Reduction of terms of imprisonment by good conduct, see PRISONS

Suspension of sentence and probation by courts, see SENTENCING AND PUNISHMENT

I. IN GENERAL, ~~¶~~21-40.

II. PAROLE, ~~¶~~41-93.

I. IN GENERAL.

- 21. Clemency in general.
- 22. Constitutional and statutory provisions.
- 23. Pardon.
 - 23.1. — In general.
- 24. — Effect of pardon.
- 25. Proceedings to obtain clemency.
- 26. General amnesty.
- 27. Reprieve.
- 28. Commutation of sentence.

II. PAROLE.

- 41. In general.
- 42. Constitutional and statutory provisions.
 - 42.1. — In general.
- 43. — Validity of statutes.

284. PARDON AND PAROLE

II. PAROLE.(Cont'd)

- 44. Offenses, punishments, and persons subject of parole.
- 45. Authority or duty to grant parole or parole consideration.
- 45.1. — In general.
- 46. — Parole as right or privilege.
- 47. — Discretionary nature.
- 48. Eligibility for parole or parole consideration.
- 48.1. — In general.
- 49. — Factors governing decision, in general.
- 50. — Minimum sentence, and computation of term in general.
- 51. — Several sentences.
- 52. — Exercise of discretion in general.
- 53. — Guidelines or matrix; severity rating.
- 54. — Sentence provisions; judge's recommendations.
- 55. Parole boards or officers.
- 55.1. — In general.
- 56. — Liabilities.
- 57. Proceedings.
- 57.1. — In general.
- 58. — Evidence and matters considered.
- 59. — Hearing and counsel.
- 60. — Decision; reconsideration.
- 61. — Reasons for decision.
- 62. — Review.
- 63. Rescission or retardation of unexecuted parole.
- 64. Parole conditions; validity.
- 64.1. — In general.
- 65. — Acceptance or rejection by prisoner.
- 66. Status and rights of parolee.
- 67. Effect of parole; duration.
- 68. Supervision of parolee; search.
- 69. Violation of parole; revocation in general.
- 70. Grounds for revocation; defenses.
- 70.1. — In general.
- 71. — Subsequent offenses.
- 72. Effect of delinquency; reimprisonment and redetermination of sentence.
- 72.1. — In general.
- 73. — Recommitment for balance of original sentence.

II. PAROLE.(Cont'd)

- 74. — Concurrent or consecutive service of sentences.
- 75. — Good conduct allowances and other credits.
- 76. — Crediting parole time.
- 77. Procedure for revocation.
- 77.1. — In general.
- 78. — Jurisdiction and authority.
- 79. — Waiver of jurisdiction.
- 80. — Detention, arrest, and bail.
- 81. — Warrant.
- 82. — Time for proceedings, in general.
- 83. — Time for arrest or warrant.
- 84. — Time for hearing; speedy trial.
- 85. — Hearing in general; notice.
- 86. — Necessity for hearing.
- 87. — Preliminary hearing.
- 88. — Requisites of hearing.
- 89. — Counsel.
- 90. — Evidence and fact questions.
- 91. — Determination and record; effect.
- 92. — Review.
- 93. Discharge from parole.

285. PARENT AND CHILD

SUBJECTS INCLUDED

- Parental relation
- Nonmarital children and their rights and disabilities in general
- Legitimation and delegitimation of nonmarital children
- Legal proceedings for determination of questions of status and ascertainment of parentage
- Rights, powers, duties, and liabilities of parents and children, as between themselves as to others, incident to the existence of the relation
- Legal proceedings relating to such relation

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Abused, neglected, dependent, or delinquent children, see INFANTS

285. PARENT AND CHILD

Adoption, see ADOPTION

Concealing birth or death of children, see OBSTRUCTING JUSTICE ¶151

Custody of children, whether adult, minor, marital, or nonmarital, see CHILD CUSTODY

Disabilities of infancy and protection of persons and property of children, see INFANTS

Gifts to nonmarital children, see GIFTS

Government assistance to needy and dependent children, see PUBLIC ASSISTANCE

Guardianship, see GUARDIAN AND WARD

Inheritance by, from, or through nonmarital children, see DESCENT AND DISTRIBUTION II(C)

Particular wrongs and offenses, even though affecting parental rights, see CRIMINAL LAW ¶45.10, SEDUCTION, and other specific topics

Remedy and procedure in habeas corpus, see HABEAS CORPUS

Support of children, whether adult, minor, marital, or nonmarital, see CHILD SUPPORT

Termination of parental rights, see INFANTS

Testamentary provisions as to nonmarital children, see WILLS

I. IN GENERAL, ¶101–130.

II. PROCEEDINGS TO DETERMINE PARENTAGE, ¶131–200.

(A) IN GENERAL, ¶131–191.

(B) ADMINISTRATIVE PROCEEDINGS, ¶192–194.

(C) INTERJURISDICTIONAL ISSUES, ¶195–200.

III. EVIDENCE OF PARENTAGE, ¶201–240.

(A) IN GENERAL, ¶201–220.

(B) EXPERIMENTS AND TESTS; SCIENTIFIC EVIDENCE, ¶221–230.

(C) WEIGHT AND SUFFICIENCY, ¶231–240.

IV. ASSISTED REPRODUCTION; SURROGATE PARENTING, ¶241–260.

V. EMANCIPATION, ¶261–280.

VI. RIGHTS, DUTIES, AND LIABILITIES CONCERNING RELATION, ¶281–380.

(A) IN GENERAL, ¶281–310.

VI. RIGHTS, DUTIES, AND LIABILITIES CONCERNING RELATION—Cont'd

(B) SERVICES AND EARNINGS OF CHILD, ¶311–320.

(C) PARENT'S CLAIMS FOR INJURIES TO CHILD, ¶321–350.

(D) CHILD'S CLAIMS FOR INJURIES TO PARENT, ¶351–360.

(E) PARENT'S LIABILITY FOR TORTS OR MISCONDUCT OF CHILD, ¶361–380.

VII. NONPARENTS IN PARENTAL ROLE, ¶381–396.

I. IN GENERAL.

101. In general.

102. Parentage and legitimacy in general.

Inheritance rights, see DESCENT AND DISTRIBUTION II(C).

103. Paternity in general.

104. Maternity in general.

105. Number of parents.

106. Formalization of relation; legitimation.

Inheritance rights, see DESCENT AND DISTRIBUTION ¶67.9.

107. — In general.

108. — By legislative act.

109. Marriage of parents, effect on child's legitimacy.

110. — In general.

111. — Invalid, annulled, or dissolved marriage.

112. — Informal or non-traditional marriage or union.

113. Disestablishment of relation; delegitimation.

114. Recognition or acknowledgment of relation.

Inheritance rights, see DESCENT AND DISTRIBUTION ¶67.9.

115. — In general.

116. — Registration.

117. — Challenges to validity; revocation.

118. Estoppel and waiver.

119. — In general.

120. — To deny or disestablish paternity; paternity by estoppel.

121. — To assert or establish paternity.

122. — To deny or assert maternity.

123. Name of child.

285. PARENT AND CHILD

II. PROCEEDINGS TO DETERMINE PARENTAGE.

(A) IN GENERAL.

131. In general.
132. Paternity proceedings in general.
133. Legitimation proceedings in general.
134. Disestablishment or delegitimation proceedings in general.
135. Bar or abatement of proceedings; defenses.
136. — In general.
137. — Death of child, mother, or putative father.
138. — Other proceedings, effect of.
139. Compromise, settlement, or release.
140. Who may maintain proceedings; parties; standing.
141. — In general.
142. — Father.
143. — Mother.
144. — Spouse or other partner of parent.
145. — Child.
146. — Government entities and officials.
147. — Other particular parties.
148. Jurisdiction.
149. — In general.
150. — Personal jurisdiction.
151. Venue.
152. Process and notice.
153. Appearance.
154. Pleading.
155. Time for proceedings; limitations and laches.
156. Course and conduct of proceedings in general.
157. Discovery.
158. Counsel.
159. Dismissal before trial.
160. Trial or hearing.
161. — In general.
162. — Time of trial or hearing; continuance and adjournment.
163. — Questions of law or fact.
164. — Instructions.
165. — Verdict or findings.
166. New trial or rehearing.
167. Judgment or order.
168. — In general.
169. — Summary judgment.

II. PROCEEDINGS TO DETERMINE PARENTAGE.(Cont'd)

170. — Default judgment.
171. — Rendition and entry.
172. — Operation and effect.
173. Relief from judgment; opening, modifying, and vacating.
174. — In general.
175. — Default judgment.
176. Sentence on criminal conviction.
177. Appeal or review.
178. — In general.
179. — Mode of review.
180. — Persons entitled to seek review or assert arguments; parties; standing.
181. — Decisions reviewable.
182. — Presentation and reservation in lower court of grounds of review.
183. — Scope and extent of review.
184. — Harmless and reversible error.
185. — Determination and disposition.
186. Costs.
187. — In general.
188. — Attorney fees.
189. — Appeal or review.

(B) ADMINISTRATIVE PROCEEDINGS.

192. In general.
193. Particular cases.

(C) INTERJURISDICTIONAL ISSUES.

195. In general.
196. What law governs.
197. Jurisdiction of forum court.
198. Foreign decrees and orders.

III. EVIDENCE OF PARENTAGE.

(A) IN GENERAL.

201. In general.
202. Judicial notice.
203. Presumptions and burden of proof.
204. — In general.
205. — As to paternity; presumed fatherhood.
 - (1). In general.
 - (2). Particular cases.
206. — As to maternity.
207. Admissibility.
208. — In general.

285. PARENT AND CHILD

III. EVIDENCE OF PARENTAGE.(Cont'd)

- 209. — Testimony, admissions, and declarations of mother.
- 210. — Character and conduct of mother.
- 211. — Testimony, admissions, and declarations of putative father.
- 212. — Character and conduct of putative father.
- 213. — Intimacy and intercourse between mother and putative or presumed father.
- 214. — Resemblance of child to putative father.
- 215. Degree of proof.

(B) EXPERIMENTS AND TESTS; SCIENTIFIC EVIDENCE.

- 221. In general.
- 222. Necessity; right to obtain, compel, or discover.
- 223. — In general; hearing.
- 224. — As to third persons.
- 225. — Sanctions; contempt.
- 226. Manner of obtaining.
- 227. Agreements.
- 228. Competency and examination of experts.
- 229. Presumptions and burden of proof.

(C) WEIGHT AND SUFFICIENCY.

- 231. In general.
- 232. As to paternity.
- 233. — In general.
- 234. — Particular cases.
- 235. As to maternity.

IV. ASSISTED REPRODUCTION; SURROGATE PARENTING.

- 241. In general.
- 242. Consent in general.
- 243. Contracts and agreements in general.
- 244. Donors of biological material; status, rights, duties, and liabilities.
- 245. Gestational carriers; status, rights, duties, and liabilities.
- 246. Spouses or other partners of donors and carriers.
- 247. Collection, storage, and disposition of biological material.
Experimentation, see ABORTION AND BIRTH CONTROL §125.
- 248. — In general.

IV. ASSISTED REPRODUCTION; SURROGATE PARENTING.(Cont'd)

- 249. — Embryos.
- 250. Posthumous children.

V. EMANCIPATION.

- 261. In general.
- 262. Grounds; factors considered.
- 263. — In general.
- 264. — Particular cases in general.
- 265. — Age; attainment of majority.
- 266. — Marriage.
- 267. — Enlistment in armed forces.
- 268. — Incarceration or other institutionalization.
- 269. — Consent or agreement.
- 270. — Abandonment, relinquishment, or renunciation.
- 271. Partial or total emancipation.
- 272. Proceedings.
- 273. — In general.
- 274. — Evidence in general.
- 275. — Presumptions and burden of proof.
- 276. — Questions of law or fact.
- 277. — Appeal and review.

VI. RIGHTS, DUTIES, AND LIABILITIES CONCERNING RELATION.

(A) IN GENERAL.

- 281. In general.
- 282. Familial and procreative rights in general.
- 283. Care, custody, and control of child; child raising.
See also CHILD CUSTODY.
- 284. — In general.
- 285. — Obligations of parenthood; duty to protect child.
Right of action against parent and parent-child immunity, see §303, 368. *Duties owed to third persons, see* §363. *Duties incident to custody award, see CHILD CUSTODY III. Duty to support, maintain, or provide for child, see CHILD SUPPORT.*
- 286. — Restraint, discipline, and punishment.
- 287. Property and contracts of child.
- 288. Claims or rights of action of child.
- 289. — In general.
- 290. — Compromise, settlement, waiver, and release.
- 291. Transactions between parent and child.

285. PARENT AND CHILD

VI. RIGHTS, DUTIES, AND LIABILITIES CONCERNING RELATION.(Cont'd)

- 292. — In general.
- 293. — Conveyances and sales.
- 294. — Contracts.
- 295. — Gifts.
- 296. — Advancements.
- 297. Adult or emancipated children in general.
- 298. Care or support of parent by child.
- 299. Agency of child for parent.
- 300. Debts and funeral expenses.
- 301. Actions and proceedings.
- 302. — In general.
- 303. — Right of action; parent-child immunity.
 - (1). In general.
 - (2). Right of action by child or child's representatives against parent.
Duties owed by parent to child, and breach thereof, see
285, 286. Duties owed by parent to third persons, see
363.
 - (3). Derivative and third-party claims against parent.
 - (4). Right of action by parent against child.
- 304. — Pleading.
- 305. — Parties.
- 306. — Evidence.
- 307. — Questions for jury.
- 308. — Instructions.

(B) SERVICES AND EARNINGS OF CHILD.

- 311. In general.
- 312. Notice or demand to child's employer.
- 313. Voluntary relinquishment or assignment of right.
- 314. Termination, loss, or forfeiture of right.
- 315. Contracts for service.
- 316. Actions for services or wages of child.

(C) PARENT'S CLAIMS FOR INJURIES TO CHILD.

- 321. In general.
- 322. Existence, nature, and grounds of action.
- 323. — In general.
- 324. — Loss of child's services, society, or consortium.
- 325. — Medical and other expenses.
- 326. — Interference with parent-child relationship.
- 327. — Adult or emancipated children.

VI. RIGHTS, DUTIES, AND LIABILITIES CONCERNING RELATION.(Cont'd)

- 328. Persons entitled to sue or recover; standing.
- 329. — In general.
- 330. — Medical and other expenses.
- 331. Persons liable.
- 332. Conditions precedent.
- 333. Defenses in general.
- 334. Waiver.
- 335. Limitations and laches.
- 336. Contributory negligence of parent.
- 337. Contributory negligence of child.
- 338. Proceedings.
- 339. — In general.
- 340. — Pleading.
- 341. — Parties.
- 342. — Evidence.
- 343. — Questions for jury.
- 344. — Instructions.

(D) CHILD'S CLAIMS FOR INJURIES TO PARENT.

- 351. In general.
- 352. Existence, nature, and grounds of action.
- 353. — In general.
- 354. — Loss of parent's services, society, or consortium.
- 355. — Adult or emancipated children.
- 356. Persons entitled to sue or recover; standing.
- 357. Persons liable.
- 358. Proceedings.

(E) PARENT'S LIABILITY FOR TORTS OR MISCONDUCT OF CHILD.

- 361. In general.
- 362. Agency of child for parent, liability premised on.
- 363. Duty of parent; parent's own negligence.
- 364. — In general.
- 365. — Supervision, restraint, or control of child in general.
- 366. — Propensities or proclivities of child; prior conduct.
- 367. — Dangerous activities and instrumentalities; negligent entrustment.
- 368. Right of action; parent-child immunity.
- 369. Adult or emancipated children.

287. PARTIES

VI. RIGHTS, DUTIES, AND LIABILITIES CONCERNING RELATION.(Cont'd)

- 370. Proceedings.
- 371. Criminal liability; offenses.

VII. NONPARENTS IN PARENTAL ROLE.

- 381. In general.
- 382. Persons in loco parentis in general.
- 383. De facto parents in general.
- 384. Psychological parents in general.
- 385. Equitable parents in general.
- 386. Proceedings to determine status.
- 387. Rights, duties, and liabilities.
- 388. — In general.
- 389. — Liability for injuries to child.
- 390. — Liability for torts or misconduct of child.
- 391. Relatives of parent and child.
- 392. — In general.
- 393. — Grandparents and grandchildren.
- 394. Spouses or other partners of parents.
- 395. — In general.
- 396. — Stepparents and stepchildren.

286. PARLIAMENTARY LAW

SUBJECTS INCLUDED

Rules and usages governing the proceedings of deliberative bodies
Their sources and principles
Their application in general

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Proceedings of—

Congress and other legislative bodies, see UNITED STATES, STATES, TERRITORIES

Conventions or caucuses to nominate candidates for election, see ELECTION LAW

Directors or trustees of corporations, see CORPORATIONS AND BUSINESS ORGANIZATIONS, FINANCE, BANKING, AND CREDIT, and other specific topics

Municipal councils or other governing bodies, see MUNICIPAL CORPORATIONS

Other bodies, boards, etc., see PUBLIC EMPLOYMENT and other specific topics

- 1. Nature and authority in general.
- 2. Sources and principles.
- 3. Adoption and application.
- 4. Constitution and organization of deliberative body.
- 5. Order, mode, and forms of proceedings.
- 6. Rulings of presiding officer and appeals therefrom.
- 7. Review of proceedings.

287. PARTIES

SUBJECTS INCLUDED

Persons in whose names civil actions in general may or must be brought or defended

Joinder of plaintiffs and defendants

Designation of parties in the proceedings

Effect of nonjoinder, misjoinder, misnomer, or other defects as to parties, and objections therefor, taken by demurrer, motion or otherwise

Representation of numerous or absent parties

Amendments as to parties, and other changes in parties, by intervention, adding new parties, substitution, etc.

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Assignment of cause of action before suit, effect of, see ASSIGNMENTS

Bankruptcy or insolvency proceedings, parties in, see BANKRUPTCY, CREDITORS' REMEDIES —1183

Civil proceedings other than actions, parties to, see HABEAS CORPUS, MANDAMUS, and topics relating to other special proceedings

Criminal prosecutions, parties to, see CRIMINAL LAW, INDICTMENT AND INFORMATION

287. PARTIES

Competency of parties as witnesses, see WITNESSES

Death or defect of parties as ground of abatement of actions, see ABATEMENT AND REVIVAL

Dismissal as to one or more co-parties, see PRETRIAL PROCEDURE

Federal courts, parties in actions in, see FEDERAL CIVIL PROCEDURE

Interpleading, see INTERPLEADER

Particular classes of actions, parties to, see CONTRACTS, TORTS, and other specific topics

Particular classes of persons, capacity to sue or to defend, see ALIENS, IMMIGRATION, AND CITIZENSHIP, INFANTS, and other specific topics

Review proceedings, parties to, see APPEAL AND ERROR, and other specific topics

Right to sue and liability to be sued, see ACTION, and topics relating to particular causes of action

Suits in equity or admiralty, parties to, see EQUITY, ADMIRALTY

Wills, proceedings for probate or contest of, see WILLS

I. PLAINTIFFS, ¶¶1–20.5.

(A) PERSONS WHO MAY OR MUST SUE, ¶¶1–12.

(B) JOINDER, ¶¶13–20.5.

II. DEFENDANTS, ¶¶21–35.

(A) PERSONS WHO MAY OR MUST BE SUED, ¶¶21–23.

(B) JOINDER, ¶¶24–35.

III. REPRESENTATIVE AND CLASS ACTIONS, ¶¶35.1–35.89.

(A) IN GENERAL, ¶¶35.1–35.30.

(B) PROCEEDINGS, ¶¶35.31–35.60.

(C) PARTICULAR CLASSES REPRESENTED, ¶¶35.61–35.89.

IV. NEW PARTIES AND CHANGE OF PARTIES, ¶¶36–65.

V. DESIGNATION AND DESCRIPTION, ¶¶66–74.

VI. DEFECTS, OBJECTIONS, AND AMENDMENT, ¶¶75–97.

I. PLAINTIFFS.

(A) PERSONS WHO MAY OR MUST SUE.

1. Capacity and interest in general.
2. Statutory provisions.

I. PLAINTIFFS.(Cont'd)

3. Nature and extent of interest.
4. Nominal and use plaintiffs in general.
5. Right to sue in name of another.
6. Real party in interest.
 - (1). In general.
 - (2). Who is real party in interest.
7. Persons holding legal title.
 - (1). In general.
 - (2). Trustees and persons with whom contract is made for benefit of others.
8. Persons expressly authorized by statute.

(B) JOINDER.

13. Persons who may join.
14. — In general.
15. — Actions on contract.
16. — Actions for tort.
17. Persons who must join.
18. — In general.
19. — Actions on contract.
20. — Actions for tort.
- 20.5. Right to use name of another as co-plaintiff.

II. DEFENDANTS.

(A) PERSONS WHO MAY OR MUST BE SUED.

21. Capacity and interest in general.
22. Trustees and others holding legal title.

(B) JOINDER.

24. Persons who may be joined.
25. — In general.
26. — Actions on contract.
27. — Actions for tort.
28. Persons who must be joined.
29. — In general.
30. — Actions on contract.
31. — Actions for tort.
32. — Persons necessary to complete determination.
33. — Persons legally represented.
34. — Grounds for omitting or dispensing with parties.
35. Making defendant party refusing to join as plaintiff.

287. PARTIES

III. REPRESENTATIVE AND CLASS ACTIONS.

(A) IN GENERAL.

- 35.1. In general.
- 35.3. Virtual representation.
- 35.5. Factors, grounds, objections, and considerations in general.
- 35.7. Superiority, manageability, and need.
- 35.9. Discretion of court.
- 35.11. Impracticability of joining all members of class; numerosity.
- 35.13. Representation of class; typicality.
- 35.15. Effect of mootness.
- 35.17. Community of interest; commonality.
- 35.19. Hybrid or spurious class actions.
- 35.21. Classes of defendants.

(B) PROCEEDINGS.

- 35.31. In general; certification in general.
- 35.33. Evidence; pleadings and supplementary material.
- 35.35. Hearing and determination.
- 35.37. Consideration of merits.
- 35.39. Time for proceeding and determination.
- 35.41. Identification of class; subclasses.
- 35.43. Notice and communications.
- 35.44. — In general.
- 35.45. — Parties responsible; expense.
- 35.47. — Sufficiency.
- 35.49. Decertification.
- 35.51. Options; withdrawal.

(C) PARTICULAR CLASSES REPRESENTED.

- 35.61. In general.
- 35.63. Constitutional challenges and actions against government in general.
- 35.65. Taxpayers and license holders or applicants.
- 35.67. Antitrust or trade regulation cases.
- 35.69. Tort cases; environmental interests; mass or toxic tort.
- 35.71. Consumers, purchasers, borrowers, or debtors.
- 35.73. Insurance claimants.
- 35.75. Employees.
- 35.77. Heirs and testamentary or trust beneficiaries.
- 35.79. Landowners; tenants; condominium interests.

III. REPRESENTATIVE AND CLASS ACTIONS.(Cont'd)

- 35.81. Prisoners and inmates.
- 35.83. Racial, religious, or ethnic groups in general.
- 35.85. Bondholders, stockholders, investors, or depositors.
Excludes stockholders' derivative actions, see CORPORATIONS AND BUSINESS ORGANIZATIONS VIII.
- 35.87. Students, parents, or faculty.
- 35.89. Welfare and social security claimants.

IV. NEW PARTIES AND CHANGE OF PARTIES.

- 36. Nature and grounds of change in general.
- 37. Intervention.
- 38. — In general.
- 39. — Actions in which intervention is authorized.
- 40. — Persons entitled to intervene.
 - (1). In general.
 - (2). Interest in subject of action in general.
 - (3). Grantees or purchasers.
 - (4). Creditors.
 - (5). Assignees.
 - (6). Lienors.
 - (7). Persons primarily or ultimately liable.
- 41. — Grounds.
- 42. — Time for intervention.
- 43. — Necessity for leave of court.
- 44. — Application and proceedings thereon.
- 45. — Order granting or refusing leave.
- 46. — Mode and form of intervention.
- 47. — Rights and liabilities of interveners.
- 48. — Proceedings in cause after intervention.
- 49. Bringing in new parties.
- 50. — In general.
- 51. — Necessity and grounds.
 - (5). In general.
 - (1). Necessity.
 - (2). Discretion of court.
 - (3). Actions in which new parties may be brought in.
 - (4). Persons who may be brought in, and grounds in general.

287. PARTIES

IV. NEW PARTIES AND CHANGE OF PARTIES.(Cont'd)

- (5). Assignees or purchasers pendente lite.
- 52. — Time for bringing in new parties and laches.
- 53. — Application and proceedings thereon.
- 54. — Mode of bringing in parties.
- 55. — Rights and liabilities of parties brought in.
- 56. — Proceedings in cause after adding parties.
- 57. Substitution.
- 58. — In general.
- 59. — Persons entitled to be substituted and grounds therefor.
 - (1). In general.
 - (2). Assignees, purchasers, and other successors in interest.
 - (3). Executor or administrator and heirs or legatees.
 - (4). Change as to character or right in which party sues or is sued.
- 60. — Time for substitution, and laches.
- 61. — Application and proceedings thereon.
- 62. — Mode of making substitution.
- 63. — Rights of parties substituted and proceedings in cause after substitution.
- 64. Change of position as plaintiff or defendant.
- 65. Striking out parties.
 - (1). In general.
 - (2). Entire change of parties.
 - (3). Effect of striking out parties, and proceedings in cause thereafter.

V. DESIGNATION AND DESCRIPTION.

- 66. Names of individuals in general.
- 67. Wrong or assumed names.
- 68. Designation of same person by two or more names.
- 69. Description of parties in general.
- 70. Nominal and use plaintiffs.
- 71. Parties in particular capacity.
- 72. Unknown parties.
- 72.1. — In general.
- 73. — Designation by fictitious names.
- 74. — Description.

VI. DEFECTS, OBJECTIONS, AND AMENDMENT.

- 75. Defects and grounds of objection as to parties in general.
 - (1). In general.
 - (2). Necessity of objection, and effect of failure to object in general.
 - (3). Time for objection.
 - (4). Mode of objection in general.
 - (5). Plea in abatement.
 - (6). Answer.
 - (7). Demurrer.
 - (8). Demurrer or answer.
 - (9). Sufficiency and effect of objection.
- 76. Want of capacity or interest.
 - (5). In general.
 - (1). Necessity and mode of objection, and effect of failure to object in general.
 - (2). Plea in abatement.
 - (3). Answer.
 - (4). General denial.
 - (5). Demurrer.
 - (6). Demurrer or answer.
 - (7). Sufficiency and effect of objection.
- 77. Nonjoinder of party plaintiff.
- 78. — In general.
- 79. — Operation and effect.
- 80. — Necessity, mode, and time of objection.
 - (1). In general.
 - (2). Plea in abatement.
 - (3). Answer.
 - (4). General issue or general denial.
 - (5). Demurrer.
 - (6). Demurrer or answer.
 - (7). Sufficiency and effect of objection.
- 81. Nonjoinder of party defendant.
- 81.1. — In general.
- 82. — Operation and effect.
- 83. — Parties entitled to object.
- 84. — Necessity, mode, and time of objection.
 - (1). In general.
 - (2). Plea in abatement.
 - (3). Answer.
 - (4). Demurrer.
 - (5). Demurrer or answer.
 - (6). Sufficiency and effect of objection.

288. PARTITION

VI. DEFECTS, OBJECTIONS, AND AMENDMENT.(Cont'd)

- 85. Misjoinder of parties plaintiff.
 - 85.1. — In general.
- 86. — Operation and effect.
- 87. — Parties entitled to object.
- 88. — Necessity, mode, and time of objection.
 - (1). In general.
 - (2). Answer.
 - (3). Demurrer.
 - (4). Demurrer or answer.
 - (5). Sufficiency and effect of objection.
- 89. Misjoinder of parties defendant.
 - 89.1. — In general.
- 90. — Operation and effect.
- 91. — Parties entitled to object.
- 92. — Necessity, mode, and time of objection.
 - (1). In general.
 - (2). Answer.
 - (3). Demurrer.
 - (4). Demurrer or answer.
- 93. Improper intervention, addition, or substitution of parties.
 - (1). In general.
 - (2). Necessity, mode, and time of objection.
- 94. Misnomer or misdescription.
 - (1). In general.
 - (2). Necessity, mode, and time of objection.
 - (3). Sufficiency of objection.
- 95. Amendment of defects.
 - (1). In general.
 - (2). Nominal and use plaintiffs.
 - (3). Misnomer or misdescription in general.
 - (4). Names of individuals.
 - (5). Names of corporations or partners.
 - (6). Parties in particular capacity.
 - (7). Time for amendment, and proceedings.
- 96. Waiver of defects and objections.
 - (1). In general.
 - (2). Want of capacity or interest.
 - (2.5). Nonjoinder of party plaintiff.
 - (3). Nonjoinder of party defendant.

VI. DEFECTS, OBJECTIONS, AND AMENDMENT.(Cont'd)

- (4). Misjoinder of parties plaintiff.
- (4.5). Misjoinder of parties defendant.
- (5). Intervention, addition, or substitution of parties.
- (6). Misnomer or misdescription.
- 97. Cure of defects by subsequent proceedings.
 - (1). In general.
 - (2). Aider by verdict or judgment.

288. PARTITION

SUBJECTS INCLUDED

Division of property, real or personal, among co-owners, by mutual consent or by judicial proceedings

How partition may be made by act of the parties, agreements therefor, and conveyances to effect such partition

Nature and scope of remedy by action for partition in general

What property may be partitioned

Grounds of such actions and defenses thereto

Jurisdiction to make partition and proceedings therefor

Incidental relief

Making actual partition or sale instead thereof

Judgments or decrees and operation and effect thereof

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Rights and liabilities of co-owners in general, see JOINT TENANCY, TENANCY IN COMMON

- I. BY ACT OF PARTIES, ¶1-9.
- II. ACTIONS FOR PARTITION, ¶10-117.
 - (A) RIGHT OF ACTION AND DEFENSES, ¶10-33.
 - (B) PROCEEDINGS AND RELIEF, ¶34-117.

288. PARTITION

I. BY ACT OF PARTIES.

1. Statutory provisions.
2. Property and estates therein subject to partition.
3. Capacity and authority of parties.
4. Agreements as to partition.
5. Parol partition.
6. Partition by arbitration.
7. Sale for partition.
8. Conveyances.
9. Operation and effect.
 - (1). In general.
 - (2). Action to confirm.

II. ACTIONS FOR PARTITION.

(A) RIGHT OF ACTION AND DEFENSES.

10. Nature and scope of remedy in general.
11. Statutory provisions.
12. Property and estates therein subject to partition.
 - (1). In general.
 - (2). Legal or equitable estates.
 - (3). Homestead.
 - (4). Estates subject to charges and contingencies.
 - (5). Life estates, remainders, and reversions.
13. Cotenancy or other common interest of parties.
14. Right to and grounds for partition in general.
15. Title to support action.
16. — In general.
17. — Establishment or determination of disputed title.
 - (1). In general.
 - (2). Determination in action for partition.
18. Possession to sustain action.
19. — In general.
20. — Effect of adverse possession.
21. Effect of provisions of deed or will.
22. Effect of agreements as to partition or of partition by act of parties.
23. Probable injury to property, inconvenience, or hardship.
24. Discretion of court.
25. Conditions precedent.
 - (1). In general.

II. ACTIONS FOR PARTITION.(Cont'd)

- (2). Settlement of estate of deceased ancestor.
 26. Defenses in general.
 27. Pendency of other action or proceeding.
 28. Abatement on death of party.
 29. Successive actions.
 30. Property to be included in action.
 31. Cross-actions.
 32. Persons entitled to sue.
 33. Persons against whom action may be brought.
- #### (B) PROCEEDINGS AND RELIEF.
34. Form of remedy.
 35. Statutory provisions.
 36. Partition by probate court in distribution of estate.
 37. Jurisdiction.
 38. — In general.
 39. — Courts of equity.
 40. — Probate courts.
 41. — Of subject-matter.
 42. — Of the person.
 43. Venue.
 44. Time to sue, limitations, and laches.
See also LIMITATION OF ACTIONS.
 45. Parties.
 46. — In general.
 - 46.1. — Necessary parties.
 - 46.2. — Proper parties.
 47. — Plaintiffs.
 48. — Defendants.
 49. — Intervention, addition, and substitution.
 50. — Defects, objections, and amendment.
 51. Process and appearance.
 52. Injunction.
 53. Receiver.
 54. Pleading.
 - 54.1. — In general.
 55. — Bill, complaint, or petition.
 - (1). In general.
 - (2). Allegations as to parties, title, interests, and possession.
 - (3). Description of property.
 - (4). Prayer for relief.
 56. — Plea or answer.

288. PARTITION

II. ACTIONS FOR PARTITION.(Cont'd)

- 57. — Cross-bill, cross-complaint, or counterclaim.
- 58. — Reply and subsequent pleadings.
- 59. — Demurrer.
- 60. — Amended and supplemental pleadings.
- 61. — Exhibits and bills of particulars.
- 62. — Issues, proof, and variance.
- 63. Evidence.
 - (5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility.
 - (3). Weight and sufficiency.
- 64. Dismissal before trial or hearing.
- 65. Scope of inquiry and powers of court at trial in general.
- 66. Proceedings preliminary to trial.
- 67. Mode and conduct of trial in general.
- 68. Reference on default or submission of rights.
- 69. Reference for trial of issues.
- 70. Submission of issues to jury.
- 71. Verdict and findings.
- 72. New trial or rehearing.
- 73. Interlocutory judgment or decree in general.
- 74. Determination as to rights of parties in property.
- 75. Determination as to necessity and extent of partition.
- 76. Determination as to mode of partition.
- 76.1. — In general.
- 77. — Actual partition or sale.
 - (1). In general.
 - (2). Consent or objection as to sale.
 - (3). Grounds for determination.
 - (4). Pleading and proof.
- 78. — Mode of actual partition in general.
- 79. — Reference of question.
- 80. Relief incidental to partition.
- 81. — In general.
- 82. — Preliminary relief.
- 83. — Adjustment of claims and equities between parties.
- 84. — Owelty, and lien therefor.
- 85. — Allowances and charges for improvements.

II. ACTIONS FOR PARTITION.(Cont'd)

- 86. — Allowances and charges for rents and profits.
- 87. — Reimbursement of payments and advances.
- 88. — Incumbrances on property.
- 89. — Pleading and proof to authorize incidental relief.
- 90. — Set-off of mutual claims.
- 91. Officers, commissioners, and referees to make partition or sale.
- 92. Proceedings to make actual partition.
- 93. Bonds or other security on actual partition.
- 94. Report or return on actual partition.
 - (1). In general.
 - (2). Objections and exceptions.
 - (3). Hearing on and disposition of report.
- 95. Final judgment or decree for actual partition, and enforcement thereof.
- 96. Conveyances on actual partition.
- 97. Enforcement of liens or charges on property partitioned.
- 98. Taking land at appraised value.
- 99. Sale.
- 100. — In general.
- 101. — Mortgaged or otherwise incumbered property.
- 102. — Manner and conduct in general.
- 103. — Persons who may purchase.
- 104. — Bids, and performance and enforcement thereof.
 - (1). In general.
 - (2). Refusal to comply with bid.
- 105. — Report or return.
- 106. — Confirmation.
- 107. — Opening, vacating, and resale.
- 108. — Collateral attack.
- 109. — Title, rights, and liabilities of purchaser.
 - (1). In general.
 - (2). Liens and incumbrances.
 - (3). Liabilities of purchaser.
 - (4). Defects in title or deficiency in quantity.
 - (5). Possession and rents.
 - (6). Defects and irregularities in proceedings.
 - (7). Rights on avoidance of sale.

288. PARTITION

II. ACTIONS FOR PARTITION.(Cont'd)

- 110. — Conveyance to purchaser.
- 111. Disposition of proceeds of sale.
 - (1). In general.
 - (2). Necessity that purchaser see to application.
 - (3). Liens and charges.
 - (4). Proceedings for distribution.
- 112. Final judgment on sale in partition, and enforcement thereof.
- 113. Review.
- 114. Fees and costs.
 - (1). In general.
 - (2). Persons, property, and funds liable.
 - (3). Amount, rate, and items in general.
 - (4). Attorney fees in general.
 - (5). Effect of contests and employment of counsel by different parties.
 - (6). Taxation and judgment.
 - (7). Payment or enforcement.
- 115. Operation and effect.
- 115.1. — In general.
- 116. — Actual partition.
 - (1). In general.
 - (2). Effect on liens and incumbrances.
- 117. — Sale in partition.

289. PARTNERSHIP

SUBJECTS INCLUDED

Relation created by the combination of persons as principals to contribute property or services in a joint undertaking for joint profit

Nature and incidents of such a combination considered as a firm

Rights, powers, duties, and liabilities of partners as between themselves and as to others, incident to the relation

Legal proceedings for enforcement thereof

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Associations not dependent on the personality of their members, or formed for purposes other than gain, whether incorporated or unincorporated, see ASSOCIATIONS, CORPORATIONS AND BUSINESS ORGANIZATIONS, and other specific topics

Banking partnerships, see FINANCE, BANKING, AND CREDIT IV

Husband and wife, partnership between, see MARRIAGE AND COHABITATION

Joint ventures, see JOINT VENTURES

Joint or common ownership of property, see JOINT TENANCY, TENANCY IN COMMON

Law firms, see ATTORNEY AND CLIENT ¶30

Mining partnerships, see MINES AND MINERALS ¶96

Partnerships issuing stock, see CORPORATIONS AND BUSINESS ORGANIZATIONS ¶3576

I. THE RELATION IN GENERAL, ¶401-510.

(A) IN GENERAL, ¶401-420.

(B) CREATION AND REQUISITES IN GENERAL, ¶421-444.

(C) PARTNERSHIP AGREEMENT, ¶445-460.

(D) NATURE AND CREATION OF RELATION AS TO THIRD PARTIES, ¶461-480.

(E) COMMENCEMENT AND DURATION, ¶481-490.

(F) EVIDENCE AND DETERMINATION, ¶491-510.

II. PARTNERSHIP NAME, ¶511-524.

III. PARTNERSHIP PROPERTY, ¶525-534.

IV. MUTUAL RIGHTS, DUTIES, AND LIABILITIES OF PARTNERS, ¶535-634.

(A) IN GENERAL, ¶535-540.

(B) NATURE OF OBLIGATION AMONG PARTNERS, ¶541-584.

(C) INDIVIDUAL TRANSACTIONS AND CONFLICTS OF INTEREST, ¶585-600.

(D) ACTIONS BETWEEN PARTNERS OR BETWEEN PARTNERS AND PARTNERSHIP, ¶601-634.

V. RIGHTS AND LIABILITIES AS TO THIRD PARTIES, ¶635-800.

289. PARTNERSHIP

V. RIGHTS AND LIABILITIES AS TO THIRD PARTIES—Cont'd

- (A) IN GENERAL; REPRESENTATION OF PARTNERSHIP BY PARTNERS, ¶635-700.
- (B) NATURE AND EXTENT OF PARTNERSHIP LIABILITIES, ¶701-710.
- (C) APPLICATION OF ASSETS TO LIABILITIES, ¶711-730.
- (D) ACTIONS BY OR AGAINST PARTNERSHIPS OR PARTNERS, ¶731-800.

VI. ALTERATION IN MEMBERSHIP OR BUSINESS, ¶801-920.

- (A) IN GENERAL, ¶801-850.
- (B) DEATH OF PARTNER AND SURVIVING PARTNERS, ¶851-900.
- (C) MERGERS, ACQUISITIONS, AND REORGANIZATIONS, ¶901-920.

VII. DISSOLUTION, SETTLEMENT, AND ACCOUNTING, ¶921-1060.

- (A) IN GENERAL; CAUSES AND GROUNDS OF DISSOLUTION, ¶921-940.
- (B) RIGHTS, POWERS, AND LIABILITIES AFTER DISSOLUTION, ¶941-980.
- (C) DISTRIBUTION, ACCOUNTING, AND SETTLEMENT AMONG PARTNERS AND THEIR REPRESENTATIVES, ¶981-1004.
- (D) ACTIONS FOR DISSOLUTION AND ACCOUNTING, ¶1005-1060.

VIII. FOREIGN PARTNERSHIPS, ¶1061-1070.

IX. LIMITED PARTNERSHIPS, ¶1071-1290.

- (A) IN GENERAL, ¶1071-1094.
- (B) FORMATION AND ORGANIZATION, ¶1095-1130.
- (C) RELATION AMONG PARTNERS, ¶1131-1170.
- (D) RELATION OF PARTNERS TO THIRD PARTIES, ¶1171-1194.
- (E) MERGERS, ACQUISITIONS, AND REORGANIZATIONS, ¶1195-1220.
- (F) DISSOLUTION, SETTLEMENT, AND ACCOUNTING, ¶1221-1280.
- (G) FOREIGN LIMITED PARTNERSHIPS, ¶1281-1290.

X. LIMITED LIABILITY PARTNERSHIPS, ¶1291-1330.

XI. OFFENSES AND PROSECUTIONS, ¶1331-1333.

I. THE RELATION IN GENERAL.

(A) IN GENERAL.

- 401. In general.
- 402. What law governs.
- 403. Constitutional and statutory provisions.
- 404. — In general.
- 405. — Purpose and construction in general.
- 406. — Validity.
- 407. — Retroactivity.
- 408. What is a partnership.
- 409. Partnership as distinct entity.
- 410. — In general.
- 411. — Aggregate or entity theory.
- 412. Scope and extent of partnership in general.
- 413. Powers of partnership as a body.

(B) CREATION AND REQUISITES IN GENERAL.

- 421. In general.
- 422. Community of interest.
- 423. — In general.
- 424. — Ownership of business in general.
- 425. — Ownership of property.
- 426. — Sharing profits and losses.
 - (1). In general.
 - (2). Sharing profits only.
 - (3). Sharing losses only.
 - (4). Manner of sharing profits; partnership distinguished from other transactions.
 - (5). — In general.
 - (6). — As interest on or in repayment of debt; partnership or loan.
 - (7). — As consideration for sale of property; partnership or sale.
 - (8). — As rent; partnership or lease.
 - (9). — As compensation for services in general; partnership or employment relationship.
 - (10). — In addition to salary or compensation.
- 427. — Sharing gross receipts.
- 428. — Sharing expenses.
- 429. — Sharing control or management of business.
- 430. Mutual agency.

289. PARTNERSHIP

I. THE RELATION IN GENERAL.(Cont'd)

- 431. Subject matter or purpose.
- 432. — In general.
- 433. — Business or profit motive.
- 434. — Ordinary or commercial partnerships.
- 435. — Professional partnerships.
- 436. Partnership distinguished from other business entities.
- 437. — In general.
- 438. — Corporations.
- 439. — Joint ventures.
- 440. Subpartnership.
- 441. Estoppel to allege or deny partnership as to partners.

(C) PARTNERSHIP AGREEMENT.

- 445. In general.
- 446. Necessity of agreement.
- 447. Form, requisites, and validity of agreement.
- 448. — In general.
- 449. — Oral agreements.
- 450. — Implied agreements.
- 451. — Use of words "partner" or "partnership".
- 452. — Capacity of parties.
- 453. — Intent.
- 454. — Assent of parties in general.
- 455. — Consideration.
- 456. — Mistake, misrepresentation, or fraud.
- 457. — Illegality.
- 458. Executory agreements to form partnership.
- 459. Modification.

(D) NATURE AND CREATION OF RELATION AS TO THIRD PARTIES.

- 461. In general.
- 462. Nature and grounds of liability.
- 463. Agreements in general.
- 464. Sharing profits and losses.
- 465. Conduct of and participation in business.
- 466. Particular agreements and transactions.
- 467. Estoppel by holding out as partner.
- 468. — In general.
- 469. — Ostensible partner in general.
- 470. — Acts and conduct constituting holding out.

I. THE RELATION IN GENERAL.(Cont'd)

- 471. — Knowledge and consent of purported partner.
- 472. — Knowledge and reliance of third party.
- 473. — Operation and effect.
- 474. Dormant and secret partners.
- 475. Contemplated partnerships.
- 476. Defective associations or corporations.
- 477. Promoters of corporations or other entities.
- 478. Individuals transacting business in partnership or corporate name.

(E) COMMENCEMENT AND DURATION.

- 481. In general.
- 482. Time when partnership begins.
- 483. Term fixed by agreement.
- 484. Continuance after term; extension or renewal.
- 485. Partnership at will.

(F) EVIDENCE AND DETERMINATION.

- 491. In general.
- 492. Presumptions and burden of proof.
- 493. Admissibility.
- 494. — In general.
- 495. — As between partners.
- 496. — As against third parties.
- 497. — As against partners.
- 498. — Proof of holding out as partner.
- 499. — Commencement and duration of partnership.
- 500. Weight and sufficiency.
- 501. — In general.
- 502. — As between partners.
- 503. — As against third parties.
- 504. — As against partners.
- 505. — Proof of holding out as partner.
- 506. — Commencement and duration of partnership.
- 507. Questions of law or fact.

II. PARTNERSHIP NAME.

- 511. In general.
- 512. Names that may be adopted.
- 513. — In general.
- 514. — Words indicating partnership.
- 515. — Names of partners.

289. PARTNERSHIP

II. PARTNERSHIP NAME.(Cont'd)

- 516. — Conflicting names; similarity or confusion.
- 517. Filing certificate of fictitious or assumed name.
- 518. — In general.
- 519. — Necessity.
- 520. Change of name.
- 521. Actions.

III. PARTNERSHIP PROPERTY.

- 525. In general.
- 526. Personal property.
- 527. Real property.
- 528. — In general.
- 529. — Real property considered as personal property.
- 530. Conversion of joint property into separate property.

IV. MUTUAL RIGHTS, DUTIES, AND LIABILITIES OF PARTNERS.

(A) IN GENERAL.

- 535. In general.
- 536. Who are partners.
- 537. Partnership interest.
- 538. — In general.
- 539. — Nature of interest.

(B) NATURE OF OBLIGATION AMONG PARTNERS.

- 541. In general.
- 542. Construction of partnership agreement in general.
- 543. Fiduciary duty.
- 544. — In general.
- 545. — Good faith.
- 546. — Loyalty.
- 547. — Fair dealing.
- 548. — Disclosure of information to other partners.
- 549. Capital of partnership.
- 550. — In general.
- 551. — Capital contribution of partners; consideration for partnership interest.
- 552. — Advances and loans to partnership by partners.
- 553. — Interest on capital, advances, and balances.
- 554. — Effect of partnership agreement.

IV. MUTUAL RIGHTS, DUTIES, AND LIABILITIES OF PARTNERS.(Cont'd)

- 555. Assumption by partnership of debts of partner.
- 556. Partnership property and funds.
- 557. — In general.
- 558. — Interests of partners.
- 559. — Possession and disposition.
- 560. — Misappropriation or conversion.
- 561. — Sale or transfer of partnership property.
- 562. — Effect of partnership agreement.
- 563. Control and management of partnership business.
- 564. — In general.
- 565. — Business judgment rule.
- 566. — Managing partner.
- 567. — Books and records.
 - (1). In general.
 - (2). Books of account.
 - (3). Access and inspection.
- 568. — Accounting as to partnership business.
 - (1). In general.
 - (2). Right to accounting.
 - (3). Duty to account.
 - (4). Proceedings.
- 569. — Effect of partnership agreement.
- 570. Services by partners to partnership.
- 571. — In general.
- 572. — Compensation.
- 573. — Reimbursement of expenses and losses.
- 574. Sharing of profits and losses.
- 575. — In general.
- 576. — Interests in profits.
 - (1). In general.
 - (2). In proportion to contributions.
 - (3). Distributions of profits to partners.
 - (4). Effect of partnership agreement.
- 577. — Liabilities for expenses and losses.
 - (1). In general.
 - (2). In proportion to contributions or profits.
 - (3). Effect of partnership agreement.
- 578. — Liabilities for negligence and misconduct.

289. PARTNERSHIP

IV. MUTUAL RIGHTS, DUTIES, AND LIABILITIES OF PARTNERS.(Cont'd)

- 579. — Indemnity from liability to third parties; advancement of litigation expenses.
- 580. — Lien of partner on partnership property.
- 581. — Contribution between partners.
- 582. Rights and powers of dormant partners.
- 583. Rights and powers of subpartners.

(C) INDIVIDUAL TRANSACTIONS AND CONFLICTS OF INTEREST.

- 585. In general.
- 586. Acquiring adverse title or interest.
- 587. Individual profits or benefits from partnership business.
- 588. — In general.
- 589. — Usurping partnership opportunities.
- 590. Engaging in other business.
- 591. — In general.
- 592. — Engaging in competing business.
- 593. Dealings between partner and partnership.
- 594. Dealings between copartners.
- 595. — In general.
- 596. — Purchase of copartner's interest in partnership.
- 597. Fraud as to partnership or copartners.
- 598. Partner in different partnerships.
- 599. Disclosure and ratification.

(D) ACTIONS BETWEEN PARTNERS OR BETWEEN PARTNERS AND PARTNERSHIP.

- 601. In general.
- 602. Grounds of action and form of remedy.
- 603. — In general.
- 604. — Necessity of accounting or settlement.
- 605. — Breach of partnership agreement.
- 606. — Breach of fiduciary duty.
- 607. — Compensation for services.
- 608. — Partnership transactions not involving an account.
- 609. — Contribution.
- 610. — Transactions independent of partnership.
- 611. Demand before action.
- 612. Defenses in general.

IV. MUTUAL RIGHTS, DUTIES, AND LIABILITIES OF PARTNERS.(Cont'd)

- 613. Set-off and counterclaim.
- 614. Jurisdiction and venue.
- 615. Persons entitled to sue; standing.
- 616. Time to sue and limitations.
- 617. Parties.
- 618. Attachment or garnishment.
- 619. Appointment of receiver.
- 620. Pleading.
- 621. Evidence.
- 622. — In general.
- 623. — Presumptions and burden of proof.
- 624. — Admissibility.
- 625. — Weight and sufficiency.
- 626. Trial.
- 627. Damages or amount of recovery.
- 628. Judgment.
- 629. Execution and enforcement of judgment.
- 630. Costs and attorney fees.

V. RIGHTS AND LIABILITIES AS TO THIRD PARTIES.

(A) IN GENERAL; REPRESENTATION OF PARTNERSHIP BY PARTNERS.

- 635. In general.
- 636. Application of principle of agency to partnerships.
- 637. — In general.
- 638. — Partnership acts through partners.
- 639. — Acting within scope of partnership business.
- 640. Nature and grounds of partner's authority.
- 641. — In general.
- 642. — Actual or apparent authority.
- 643. — Express or implied authority.
- 644. — Commercial character of partnership.
- 645. — Usage or course of business.
- 646. Majority and minority partners.
- 647. Managing partner.
- 648. Restrictions on partner's authority.
- 649. — In general.
- 650. — By partnership agreement.
- 651. — By notice of dissent.
- 652. Partner in different partnerships.
- 653. Individual interest or credit of partner in general.

289. PARTNERSHIP

V. RIGHTS AND LIABILITIES AS TO THIRD PARTIES.(Cont'd)

- 654. Use of partnership or individual name.
- 655. Use of seal.
- 656. Particular transactions.
- 657. — In general.
- 658. — Disposition of partnership property in general.
- 659. — Contracts in general.
- 660. — Contracts of employment.
- 661. — Purchases, sales, and warranties.
- 662. — Collections and payments in general.
- 663. — Payment of individual debt.
- 664. — Borrowing or loaning money.
- 665. — Mortgages or pledges.
 - (1). In general.
 - (2). For partnership debt.
 - (3). For individual debt.
- 666. — Negotiable instruments.
 - (1). In general.
 - (2). For partnership debt.
 - (3). For individual debt.
- 667. — Indemnity, guaranty, or suretyship.
- 668. — Compromises and releases.
- 669. — Submission to arbitration.
- 670. — Conduct of litigation.
- 671. — Confession of judgment.
- 672. — Assignment for benefit of creditors.
- 673. — Representations or admissions.
- 674. — Wrongful acts; imputed liability.
 - (1). In general.
 - (2). Acting within scope of partnership business in general.
 - (3). Misappropriation or conversion.
 - (4). Embezzlement.
 - (5). Fraud.
 - (6). Negligence.
- 675. Fraud as to partners.
- 676. Estoppel to deny partner's authority.
- 677. — In general.
- 678. — Estoppel of partnership by acts or conduct of partners.
- 679. — Knowledge or notice.
- 680. Ratification and repudiation.
- 681. — In general.
- 682. — By assent.

V. RIGHTS AND LIABILITIES AS TO THIRD PARTIES.(Cont'd)

- 683. — By acquiescence, recognition, or adoption of transaction.
- 684. — By accepting or retaining benefits.
- 685. — Knowledge or notice of facts to support ratification.
- 686. — Purchases and sales.
- 687. — Mortgages.
- 688. — Negotiable instruments.
- 689. Rights acquired by partnership.
- 690. Knowledge or notice to partner as affecting partnership; imputed knowledge.
- 691. — In general.
- 692. — Matters within scope of partnership business.
- 693. — Adverse interest.
- 694. Notice of authority of partner to person dealing with partnership.
- 695. Individual act or interest as creating individual liability.
- 696. Undisclosed partnership.
- 697. Misrepresentation as to partnership.
- 698. Dormant partners.

(B) NATURE AND EXTENT OF PARTNERSHIP LIABILITIES.

- 701. In general.
- 702. Joint and several liability in general.
- 703. Acts of agent or employee of partnership.
- 704. Fiduciary relations.
- 705. Property misappropriated or wrongfully obtained.
- 706. Contracts.
- 707. Torts.

(C) APPLICATION OF ASSETS TO LIABILITIES.

- 711. In general.
- 712. Marshaling partnership and individual assets in general.
- 713. Assets of partnership.
- 714. — In general.
- 715. — Rights and liens of partners as to partnership debts.
- 716. — Rights of partnership creditors through partners.
- 717. — Rights of creditors of individual partners.

289. PARTNERSHIP

V. RIGHTS AND LIABILITIES AS TO THIRD PARTIES.(Cont'd)

- 718. — Rights and liens of partners as creditors of partnership.
- 719. — Transactions by or between partners as affecting rights of creditors.
 - (1). In general.
 - (2). Distribution of assets among partners.
 - (3). Transfer of partnership assets to copartners or to new partnership.
 - (4). Payment or security of partnership debt.
 - (5). Payment or security of individual debt.
 - (6). Payment or security by partner of individual debt.
- 720. Assets of individual partners.
- 721. — In general.
- 722. — Rights of individual creditors.
- 723. — Rights of partnership creditors.
- 724. — Rights of partnership or copartners as creditors.
- 725. — Transactions by or between partners affecting rights of creditors.
- 726. Partners in different partnerships.

(D) ACTIONS BY OR AGAINST PARTNERSHIPS OR PARTNERS.

- 731. In general.
- 732. Capacity of partnership to sue and be sued in general.
- 733. Nature and form of remedy.
- 734. Jurisdiction.
- 735. Venue.
- 736. Time to sue; limitations and laches.
- 737. Use of partnership name.
- 738. Persons entitled to sue; standing.
- 739. Parties.
- 740. — In general.
- 741. — Partnership or partners as plaintiffs.
 - (1). In general.
 - (2). Joinder.
- 742. — Partnership or partners as defendants.
 - (1). In general.
 - (2). Joinder.

V. RIGHTS AND LIABILITIES AS TO THIRD PARTIES.(Cont'd)

- 743. — Partnerships having common member.
- 744. — Intervention of partners.
- 745. Alteration or dissolution of partnership pending suit.
- 746. Process.
- 747. — In general.
- 748. — Necessity, form, and requisites.
- 749. — Place and time for service.
- 750. — Mode of service in general.
- 751. — Person who should or may be served.
 - (1). In general.
 - (2). Partners not served.
- 752. — Substituted or constructive service.
 - (1). In general.
 - (2). Service by mail.
 - (3). Service on secretary of state or other public official.
- 753. — Requisites and sufficiency of return of service.
- 754. — Objections to service and waiver thereof.
- 755. — Motions to set aside service.
- 756. Appearance.
- 757. Discontinuance or dismissal as to partner.
- 758. Attachment or garnishment against partnership or partners.
- 759. — In general.
- 760. — Property or interests subject.
- 761. — Grounds for proceeding.
- 762. — Proceedings to procure levy, lien, and priorities.
- 763. — Proceedings to support and enforce.
- 764. Receivers.
- 765. Pleading.
- 766. — In general.
- 767. — Allegation and denial of partnership.
- 768. — Verification.
- 769. — Amendment.
- 770. — Defenses.
- 771. — Variance between pleadings and proof.
- 772. Evidence.
- 773. — In general.

289. PARTNERSHIP

V. RIGHTS AND LIABILITIES AS TO THIRD PARTIES.(Cont'd)

- 774. — Presumptions and burden of proof.
- 775. — Admissibility.
- 776. — Weight and sufficiency.
- 777. Trial.
- 778. — In general.
- 779. — Instructions.
- 780. — Questions of law or fact.
- 781. — Verdict and findings.
- 782. Damages or amount of recovery.
- 783. Judgment.
- 784. — In general.
- 785. — Joint or several judgment.
- 786. — Judgment when some partners were not served with process.
- 787. — Proceedings to vacate.
- 788. Execution and enforcement of judgment.
- 789. — In general.
- 790. — Application of partnership assets.
- 791. — Application of individual assets.
- 792. — Remedies for improper levy.
- 793. — Levy, lien, and custody of property.
- 794. — Title and rights of purchaser.
- 795. — Charging orders.
- 796. — Proceedings for enforcement of judgment against partner not served with process.
- 797. Costs and attorney fees.

VI. ALTERATION IN MEMBERSHIP OR BUSINESS.

(A) IN GENERAL.

- 801. In general.
- 802. Provisions of partnership agreement in general.
- 803. Change of membership in partnership in general.
- 804. — In general.
- 805. — Admission of new partner.
 - (1). In general.
 - (2). Fraud and misrepresentation.
- 806. — Removal or expulsion.
- 807. Transfer of partner's interest.
- 808. — In general.
- 809. — Transfer to copartner.
 - (1). In general.
 - (2). Fraud and misrepresentation.
- 810. — Transfer to third party.

VI. ALTERATION IN MEMBERSHIP OR BUSINESS.(Cont'd)

- (1). In general.
- (2). Restrictions on transfer in general.
- (3). Right of first refusal of other partners.
- (4). Fraud and misrepresentation.
- 811. Continued use of partnership name.
- 812. Good will of old partnership.
- 813. Competition of retiring partner with new partnership.
- 814. Assets of old partnership.
- 815. — In general.
- 816. — Rights of retiring partner.
- 817. — Rights of continuing partners or new partnership.
- 818. — Rights of incoming or succeeding partners.
- 819. Obligations of old partnership.
- 820. — In general.
- 821. — Liabilities of retiring partner.
- 822. — Liabilities of continuing partners or new partnership.
- 823. — Liabilities of incoming or succeeding partners.
- 824. Assumption of obligations of old partnership.
- 825. — In general.
- 826. — By continuing partners.
- 827. — By new partnership.
- 828. — By incoming or succeeding partners.
- 829. — Effect on rights of creditors.
- 830. — Retiring partner as surety for payment of partnership debts.
- 831. Interest of retiring partner in assets of new partnership.
- 832. Liabilities of retiring partner for acts and obligations of continuing partners or new partnership.
- 833. Actions after change of membership.
- 834. — In general.
- 835. — Jurisdiction and venue.
- 836. — Persons entitled to sue; standing.
- 837. — Time to sue; limitations and laches.
- 838. — Defenses.
- 839. — Parties.
- 840. — Pleading.

289. PARTNERSHIP

VI. ALTERATION IN MEMBERSHIP OR BUSINESS.(Cont'd)

- 841. — Evidence.
- 842. — Damages or amount of recovery.
- 843. — Trial.
- 844. — Judgment.
- 845. — Costs and attorney fees.

(B) DEATH OF PARTNER AND SURVIVING PARTNERS.

- 851. In general.
- 852. Effect of partnership agreement in general.
- 853. Right and duty to liquidate partnership affairs in general.
- 854. Collection and disposition of assets.
- 855. — In general.
- 856. — Right to possession and control of partnership assets and effects.
- 857. — Collection of assets.
- 858. — Disposition of assets in general.
- 859. — Mortgage of partnership property.
- 860. — Assignment for benefit of creditors.
- 861. — Payment of individual debts.
- 862. — Application of payments made to or by surviving partner.
- 863. Real property of partnership.
- 864. Obligations of partnership.
- 865. Obligations incurred in winding up business.
- 866. Rights and liabilities of survivors as to estate of deceased partner.
- 867. Bond of surviving partners.
- 868. Surviving partner as executor or administrator of deceased partner's estate.
- 869. Statutory partnership administrators.
- 870. Compensation for winding up business.
- 871. Right or duty of surviving partners to buy interest of deceased partner and continuance of business of partnership.
- 872. — In general.
- 873. — Valuation.
- 874. — Provisions of partnership agreement in general.
- 875. — Directions of deceased partner's will.
- 876. — Accounting and settlement by survivors' continuing business.

VI. ALTERATION IN MEMBERSHIP OR BUSINESS.(Cont'd)

- 877. — Continued use of partnership name.
- 878. — Good will of partnership.
- 879. Actions by or against surviving partners or representatives of deceased partners.
- 880. — In general.
- 881. — Nature and form of remedy.
- 882. — Jurisdiction and venue.
- 883. — Persons entitled to sue; standing.
- 884. — Defenses.
- 885. — Conditions precedent.
- 886. — Time to sue; limitations and laches.
- 887. — Parties.
- 888. — Attachment.
- 889. — Receivers.
- 890. — Pleading.
- 891. — Evidence.
- 892. — Damages or amount of recovery.
- 893. — Trial.
 - (1). In general.
 - (2). Instructions.
 - (3). Questions of law or fact.
 - (4). Verdict and findings.
- 894. — Judgment.
- 895. — Execution.
- 896. — Costs and attorney fees.

(C) MERGERS, ACQUISITIONS, AND REORGANIZATIONS.

- 901. In general.
- 902. Agreements for merger.
- 903. Conversion from or into other type of business entity.

VII. DISSOLUTION, SETTLEMENT, AND ACCOUNTING.

(A) IN GENERAL; CAUSES AND GROUNDS OF DISSOLUTION.

- 921. In general.
- 922. Presumption of continuance of relation.
- 923. Provisions for dissolution in partnership agreement in general.
- 924. Election of partner to dissolve.
- 925. Expiration of term.
- 926. Mutual consent.
- 927. Withdrawal of partner.

289. PARTNERSHIP

VII. DISSOLUTION, SETTLEMENT, AND ACCOUNTING.(Cont'd)

- 928. Transfer of partner's interest.
- 929. Admission of new partner.
- 930. Completion of enterprise.
- 931. Abandonment or impossibility of enterprise.
- 932. War.
- 933. Sale of entire property of partnership.
- 934. Insolvency of partnership or partner.
- 935. Dissensions among partners.
- 936. Misconduct of partner.
- 937. Death or disability of partner.
- 938. Forcible dissolution.
- 939. Wrongful dissolution.

(B) RIGHTS, POWERS, AND LIABILITIES AFTER DISSOLUTION.

- 941. In general.
- 942. Status of partnership after dissolution in general.
- 943. Effect of dissolution.
- 944. — In general.
- 945. — As to fiduciary relation of partners.
- 946. — As to powers of partners.
- 947. — As to rights and liabilities of third parties.
- 948. — As to pending proceedings and judgments.
- 949. Continuance of partnership for purposes of winding up.
- 950. — In general.
- 951. — Powers and acts of liquidating partner in general.
- 952. — Use of partnership name in liquidation.
- 953. — Control and disposition of partnership property.
- 954. — Collections and payments.
- 955. — Performance of contracts of partnership.
- 956. — Contracting new obligations in general.
- 957. — Making or indorsing negotiable instruments.
- 958. — Compromises and releases.
- 959. Notice of dissolution.
- 960. — In general.
- 961. — Necessity.

VII. DISSOLUTION, SETTLEMENT, AND ACCOUNTING.(Cont'd)

- 962. — Sufficiency.
- 963. — Operation and effect.
- 964. Holding out as partner after dissolution.
- 965. Representations or admissions.
- 966. Wrongful acts.
- 967. Actions by or against partners or partnership after dissolution.
- 968. — In general.
- 969. — Jurisdiction and venue.
- 970. — Persons entitled to sue; standing.
- 971. — Time to sue; limitations and laches.
- 972. — Pleading.
- 973. — Evidence.
- 974. — Trial.
 - (1). In general.
 - (2). Instructions.
 - (3). Questions of law or fact.
- 975. — Damages or amount of recovery.
- 976. — Judgment.
- 977. — Costs and attorney fees.

(C) DISTRIBUTION, ACCOUNTING, AND SETTLEMENT AMONG PARTNERS AND THEIR REPRESENTATIVES.

- 981. In general.
- 982. Necessity of settlement in general.
- 983. Who is entitled to require accounting.
- 984. Who is liable to account.
- 985. Property and transactions to be included.
- 986. — In general.
- 987. — Claims by or against partnership.
- 988. — Claims between partners.
- 989. Inventory and valuation.
- 990. Payment of partnership debts.
- 991. Apportionment of losses.
- 992. Repayment to partners of advances.
- 993. Division and distribution of capital.
- 994. Division and distribution of profits.
- 995. Compensation for services in winding up business.
- 996. Interest on balance due partner after dissolution.
- 997. Lien for balance.
- 998. Right to partnership name, good will, and books of account.
- 999. Private accounting and settlement.

289. PARTNERSHIP

**VII. DISSOLUTION, SETTLEMENT,
AND ACCOUNTING. (Cont'd)**

- 1000. — In general.
- 1001. — Agreements for settlement.
 - (1). In general.
 - (2). Performance or breach.
- 1002. — Requisites and validity.
 - (1). In general.
 - (2). Mistake or fraud.
- 1003. — Operation and effect.
 - (1). In general.
 - (2). Conclusiveness.
 - (3). Laches in disputing settlement.

**(D) ACTIONS FOR DISSOLUTION
AND ACCOUNTING.**

- 1005. In general.
- 1006. Nature and scope of remedy.
- 1007. Grounds of action.
- 1008. Conditions precedent.
- 1009. Defenses.
- 1010. Form of remedy.
- 1011. Jurisdiction.
- 1012. Venue.
- 1013. Persons entitled to sue; standing.
- 1014. Time to sue; limitations and laches.
- 1015. Parties.
- 1016. Process and appearance.
- 1017. Receivership.
- 1018. — In general.
- 1019. — Grounds for or objections to appointment.
- 1020. — Appointment of receiver.
- 1021. — Effect of appointment and title acquired by receiver.
- 1022. — Continuance of business.
- 1023. — Accounting by receiver.
- 1024. Effect of bringing action.
- 1025. Pleading.
- 1026. — In general.
- 1027. — Answer or other responsive pleading.
- 1028. — Amended and supplemental pleadings.
- 1029. — Variance between pleadings and proof.
- 1030. Evidence.
- 1031. — In general.
- 1032. — Presumptions and burden of proof.

**VII. DISSOLUTION, SETTLEMENT,
AND ACCOUNTING. (Cont'd)**

- 1033. — Admissibility.
- 1034. — Weight and sufficiency.
- 1035. Trial or hearing.
- 1036. — In general.
- 1037. — Questions of law or fact.
- 1038. Interlocutory judgment or decree.
- 1039. Proceedings on accounting.
- 1040. — In general.
- 1041. — Reference to take and state account.
- 1042. — Charges and credits.
- 1043. — Set-off and counterclaim.
- 1044. — Form and requisites of account.
- 1045. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 1046. — Vouchers and proof of payment.
- 1047. — Partnership books of account and accounts rendered or stated.
- 1048. — Decision, findings, or report on accounting.
- 1049. — Operation and effect of accounting.
- 1050. — Actions to open or set aside accounting.
- 1051. Collection of assets.
- 1052. Sale or other disposition of property.
- 1053. Presentation and allowance of claims.
- 1054. Objections and exceptions.
- 1055. Final judgment or decree.
- 1056. Costs and attorney fees.

VIII. FOREIGN PARTNERSHIPS.

- 1061. In general.
- 1062. Obtaining authorization to do business in state.
- 1063. — In general.
- 1064. — What constitutes doing business.
- 1065. Actions by or against foreign partnership.

IX. LIMITED PARTNERSHIPS.

(A) IN GENERAL.

- 1071. In general.

289. PARTNERSHIP

IX. LIMITED PARTNERSHIPS.(Cont'd)

- 1072. Nature and characteristics in general.
- 1073. — In general.
- 1074. — Partnership in commendam.
- 1075. Constitutional and statutory provisions.
- 1076. — In general.
- 1077. — Purpose and construction in general.
- 1078. — Validity.
- 1079. — Retroactivity.
- 1080. What law governs.
- 1081. Limited partnership distinguished from other business entities.
- 1082. — In general.
- 1083. — General partnership.
- 1084. — Limited liability company.
- 1085. — Corporation.
- 1086. Limited partnership as distinct entity.
- 1087. Disregarding entity; piercing veil.
- 1088. — In general.
- 1089. — Particular cases.
- 1090. — Actions.

(B) FORMATION AND ORGANIZATION.

- 1095. In general.
- 1096. Organizers and promoters.
- 1097. — In general.
- 1098. — Fiduciary duties.
- 1099. Partnership agreement.
- 1100. Subject matter and purpose.
- 1101. — In general.
- 1102. — Limitation of personal liability.
- 1103. — Unlawful purpose.
- 1104. Certificate of formation.
- 1105. — In general.
- 1106. — Form and requisites.
- 1107. — Affidavit of payment of capital.
- 1108. — Filing, recording, and publication of certificate.
- 1109. — Amendment of certificate.
- 1110. Failure to comply with statutory requirements.
- 1111. Partnership name.
- 1112. — In general.
- 1113. — Names that may be adopted.
- 1114. — Words indicating limited partnership.
- 1115. Commencement and term.
- 1116. Continuance or renewal.

IX. LIMITED PARTNERSHIPS.(Cont'd)

- 1117. Books and records.
- 1118. Estoppel to allege or deny partnership.

(C) RELATION AMONG PARTNERS.

- 1131. In general.
- 1132. General partner.
- 1133. — In general.
- 1134. — Fiduciary duty to partnership and limited partners.
- 1135. — Breach of partnership agreement.
- 1136. — Compensation.
- 1137. — Indemnification.
- 1138. — Representation of partnership.
 - (1). In general.
 - (2). Acts and knowledge of general partner imputed to partnership.
- 1139. — Withdrawal, resignation, or removal.
- 1140. — Transfer of general partnership interest.
- 1141. Limited partners.
- 1142. — In general.
- 1143. — Capital contribution; subscription.
- 1144. — Rights in and title to partnership property.
- 1145. — Management of partnership business.
- 1146. — Services to partnership; limited partners as employees.
- 1147. — Inspection of partnership books and records.
- 1148. — Admission of new partner.
- 1149. — Withdrawal or removal.
- 1150. — Transfer of limited partnership interest.
 - (1). In general.
 - (2). Death of limited partner.
 - (3). Right of first refusal of partnership or partners.
- 1151. One person as both general and limited partner.
- 1152. Conflict of interest and self-dealing.
- 1153. Withdrawal of capital.
- 1154. Allocation and distribution of profits.
- 1155. Allocation of losses.
- 1156. Actions between partners.
- 1157. — In general.
- 1158. — Nature of remedy.

289. PARTNERSHIP

IX. LIMITED PARTNERSHIPS.(Cont'd)

- 1159. — Derivative action.
 - (1). In general.
 - (2). Necessity and sufficiency of pre-suit demand.
 - (3). Excuse for failure to demand; futility.
- 1160. — Jurisdiction and venue.
- 1161. — Persons entitled to sue; standing.
- 1162. — Time to sue; limitations or laches.
- 1163. — Parties.
- 1164. — Process and appearance.
- 1165. — Pleading.
- 1166. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 1167. — Damages or amount of recovery.
- 1168. — Trial and judgment.
- 1169. — Costs and attorney fees.

(D) RELATION OF PARTNERS TO THIRD PARTIES.

- 1171. In general.
- 1172. Liability of partners for partnership debts and acts.
- 1173. — In general.
- 1174. — General partner.
- 1175. — Limited partners.
 - (1). In general.
 - (2). Contracts and securities for payment of partnership liabilities.
 - (3). — In general.
 - (4). — Guaranty by limited partner.
 - (5). Fraud as to creditors.
 - (6). Participation in management of business.
 - (7). Participation in unauthorized or wrongful acts.
 - (8). Extent of liability.
 - (9). Debts to which liability extends.
 - (10). Persons entitled to enforce liability.
 - (11). Knowledge of or notice to third party of partnership status.
 - (12). Joint or several liability.
 - (13). Effect of insolvency.

IX. LIMITED PARTNERSHIPS.(Cont'd)

- (14). — In general.
- (15). — Trust fund doctrine.
- (16). — Conveyances on or in contemplation of insolvency.
- (17). — Application of assets to liabilities.
- (18). — Rights of limited partners to share in assets of partnership.
- (19). Rights of creditors of limited partners.
- (20). — In general.
- (21). — Charging orders.
- 1176. Actions by or against partnership or partners.
- 1177. — In general.
- 1178. — Nature of remedy.
- 1179. — Derivative action.
 - (1). In general.
 - (2). Necessity and sufficiency of pre-suit demand.
 - (3). Excuse for failure to demand; futility.
- 1180. — Jurisdiction and venue.
- 1181. — Persons entitled to sue; standing.
- 1182. — Time to sue; limitations or laches.
- 1183. — Parties.
- 1184. — Process.
 - (1). In general.
 - (2). What partner or agent may be served.
 - (3). Substituted service.
 - (4). — In general.
 - (5). — Service on Secretary of State or other public official.
- 1185. — Appearance.
- 1186. — Pleading.
- 1187. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 1188. — Damages or amount of recovery.
- 1189. — Trial and judgment.
- 1190. — Costs and attorney fees.

289. PARTNERSHIP

(E) MERGERS, ACQUISITIONS, AND REORGANIZATIONS.

- 1195. In general.
- 1196. Mergers.
- 1197. — In general.
- 1198. — Agreements for merger.
- 1199. — Assent of limited partners; disclosure and misrepresentations.
- 1200. — Rights and remedies of dissenting limited partner.
- 1201. — Operation and effect of merger.
- 1202. — Actions by or against surviving partnership.
- 1203. Sale of substantially all partnership assets.
- 1204. Reorganizations.
- 1205. — In general.
- 1206. — Conversion of limited partnership from or into other business entity.

(F) DISSOLUTION, SETTLEMENT, AND ACCOUNTING.

- 1221. In general.
- 1222. Causes and grounds of dissolution.
- 1223. — In general.
- 1224. — Invalid or fraudulent organization.
- 1225. — Expiration of term.
- 1226. — Condition or contingency prescribed by certificate.
- 1227. — Violation of certificate or statute.
- 1228. — Mutual consent.
- 1229. — Completion or abandonment of enterprise.
- 1230. — Alteration in membership.
- 1231. — Dissension among partners; partner deadlock.
- 1232. — Loss or transfer of capital or property.
- 1233. — Insolvency of partnership.
- 1234. — Suspension of business.
- 1235. — Interests of partners.
- 1236. Proceedings for dissolution.
- 1237. — In general.
- 1238. — Voluntary dissolution.
- 1239. Adversary or enforced dissolution.
- 1240. — In general.
- 1241. — By or in name of state or public officers.
- 1242. — By partners.

IX. LIMITED PARTNERSHIPS.(Cont'd)

- 1243. — By creditors.
- 1244. Operation and effect of dissolution.
- 1245. — In general.
- 1246. — Conveyances and preferences after proceedings for dissolution.
- 1247. — Continuance of partnership for purposes of winding up.
- 1248. — Reinstatement after dissolution.
- 1249. Receivership.
- 1250. — In general.
- 1251. — Appointment.
- 1252. — Powers, duties, and liabilities of receiver.
- 1253. — Actions.
- 1254. Collection of assets, enforcement of liabilities, and payment of claims.
- 1255. — In general.
- 1256. — Collection of assets.
- 1257. — Presentation and allowance of claims.
- 1258. — Priorities of claims.
- 1259. — Payment of claims.
- 1260. — Distribution to partners.
- 1261. Actions by or against partnership or partners after dissolution.
- 1262. — In general.
- 1263. — Capacity of partnership to sue and be sued.
- 1264. — Jurisdiction and venue.
- 1265. — Persons entitled to sue; standing.
- 1266. — Time to sue; limitations and laches.
- 1267. — Pleading.
- 1268. — Evidence.
- 1269. — Trial, judgment, and relief.
- 1270. — Costs and attorney fees.

(G) FOREIGN LIMITED PARTNERSHIPS.

- 1281. In general.
- 1282. Obtaining authorization to do business in state.
- 1283. — In general.
- 1284. — What constitutes doing business.
- 1285. Actions by or against foreign limited partnership.

X. LIMITED LIABILITY PARTNERSHIPS.

- 1291. In general.

289. PARTNERSHIP

X. LIMITED LIABILITY PARTNERSHIPS.(Cont'd)

- 1292. Constitutional and statutory provisions.
- 1293. What law governs.
- 1294. Nature and characteristics.
- 1295. Limited liability partnership as distinct entity.
- 1296. Disregarding entity; piercing limited liability veil.
- 1297. Formation and organization.
- 1298. — In general.
- 1299. — Partnership agreement.
- 1300. — Name.
- 1301. — Filing, registration, and recording of certificate.
- 1302. Partners and partnership interests.
- 1303. — In general.
- 1304. — Capital contribution; subscription.
- 1305. — Rights and liabilities of partners to partnership and other partners.
- 1306. — Partner's interest in partnership property.
- 1307. — Withdrawal, removal, or death of partner.
- 1308. — Transfer of partnership interest.
- 1309. — Liability for debts and acts of partnership.
- 1310. — Actions.
- 1311. Management of partnership.
- 1312. — In general.
- 1313. — Fiduciary duties to partnership and partners.
- 1314. — Liabilities for debts and acts of partnership.
- 1315. — Actions.
- 1316. Derivative actions by partners.
- 1317. Powers and duties of partnership.
- 1318. — In general.
- 1319. — Representation of partnership by partners.
- 1320. — Actions by or against partnership.
- 1321. Mergers, acquisitions, and reorganizations.
- 1322. Dissolution, accounting, and settlement.
- 1323. Foreign limited liability partnerships.

XI. OFFENSES AND PROSECUTIONS.

- 1331. In general.

XI. OFFENSES AND PROSECUTIONS.(Cont'd)

- 1332. Limited partnerships.
- 1333. Limited liability partnerships.

290. PARTY WALLS

SUBJECTS INCLUDED

Walls built partly on the land of each of two adjoining proprietors, for the common benefit of both

Statutory provisions relating thereto

Title to such walls

Rights and liabilities of adjoining owners in respect thereof

Legal proceedings relating thereto

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Adjoining landowners, rights and liabilities in general, see ADJOINING LANDOWNERS

Partition fences, see FENCES

1. Nature of property or right in general.
2. Structures constituting party walls.
3. Provisions of statutes and ordinances.
4. Creation and existence of right.
 - (1). In general.
 - (2). Agreements of adjoining owners.
 - (3). Use or acquiescence in use.
 - (4). Prescription.
5. Termination of right.
6. Extent of right to use wall in general.
7. Contracts as to use of wall.
8. Rights and liabilities of adjoining owners.
 - (.5). In general.
 - (1). Right to use adjoining land in building party wall.
 - (2). Construction and operation of contracts for erection or maintenance.
 - (3). Alteration, destruction, repairs, and rebuilding of party walls.
 - (4). Encroachments.

291. PATENTS

- (5). Injuries incident to construction, removal, or alteration of party walls.
- 9. Rights and liabilities of purchasers.
 - (.5). In general.
 - (1). Rights and liabilities independent of covenants or agreements in general.
 - (2). Statutory right to compensation for party walls.
 - (3). Rights and liabilities between grantor and grantee.
 - (4). Covenants and agreements as affecting purchasers in general.
 - (5). Covenants and agreements personal or running with the land.
 - (6). Conveyances subject to party wall agreements.
 - (7). Notice of party wall agreement.
- 10. Actions.

291. PATENTS

SUBJECTS INCLUDED

Nature and incidents of the exclusive right of an inventor to the use of his invention, secured by government grant

Proceedings to obtain and issue of such patents

Construction and operation of such patents

Exercise, protection, and enforcement of the exclusive rights granted

Infringement of patent rights

Remedies relating thereto

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Copyrights, see COPYRIGHTS AND INTELLECTUAL PROPERTY

Land patents, see PUBLIC LANDS, MINES AND MINERALS

Trademarks, see TRADEMARKS

- I. IN GENERAL, ¶401-420.
- II. PATENTABILITY AND VALIDITY, ¶421-850.
 - (A) IN GENERAL, ¶421-440.
 - (B) ELIGIBLE SUBJECT MATTER, ¶441-480.
 - (C) NOVELTY; ANTICIPATION, ¶481-650.
 - 1. IN GENERAL, ¶481-510.
 - 2. PARTICULAR FIELDS OF INVENTION, ¶511-570.
 - 3. EVIDENCE AND DETERMINATION, ¶571-590.
 - 4. PRIOR DESCRIPTION IN PRINTED PUBLICATION, ¶591-610.
 - 5. PRIOR PUBLIC USE OR SALE, ¶611-650.
 - (D) UTILITY, ¶651-670.
 - (E) OBVIOUSNESS; LACK OF INVENTION, ¶671-810.
 - 1. IN GENERAL, ¶671-680.
 - 2. FACTORS CONSIDERED, ¶681-730.
 - 3. PARTICULAR FIELDS OF INVENTION, ¶731-790.
 - 4. EVIDENCE AND DETERMINATION, ¶791-810.
 - (F) OTHER CHALLENGES TO VALIDITY, ¶811-850.
- III. PERSONS ENTITLED TO PATENTS, ¶851-900.
 - (A) IN GENERAL, ¶851-860.
 - (B) INVENTORSHIP AND PRIORITY, ¶861-890.
 - (C) JOINT INVENTORS, ¶891-900.
- IV. PATENT APPLICATIONS AND PROCEEDINGS, ¶901-1310.
 - (A) IN GENERAL, ¶901-930.
 - (B) EXAMINATION, ¶931-1000.
 - (C) ADMINISTRATIVE REVIEW, ¶1001-1100.
 - (D) CONCLUSIVENESS AND EFFECT OF ADMINISTRATIVE DECISIONS, ¶1101-1130.
 - (E) JUDICIAL REVIEW OR INTERVENTION, ¶1131-1150.
 - (F) CIVIL ACTION TO OBTAIN PATENT, ¶1151-1180.
 - (G) POSTISSUANCE PROCEEDINGS, ¶1181-1300.
 - 1. IN GENERAL, ¶1181-1190.
 - 2. DISCLAIMERS, ¶1191-1200.
 - 3. REISSUES, ¶1201-1240.
 - 4. EX PARTE REEXAMINATION, ¶1241-1260.
 - 5. OTHER POSTISSUANCE PROCEEDINGS, ¶1261-1270.

291. PATENTS

- IV. PATENT APPLICATIONS AND PROCEEDINGS—Cont'd
 - (G) POSTISSUANCE PROCEEDINGS—Cont'd
 - 6. PATENT ANNULLED OR CANCELLED AS VOID, ⑈1271–1280.
 - 7. PATENT FOUND UNENFORCEABLE FOR INEQUITABLE CONDUCT, ⑈1281–1300.
 - (H) INTERNATIONAL PATENT APPLICATIONS, ⑈1301–1310.
- V. CONSTRUCTION AND OPERATION OF PATENTS, ⑈1311–1430.
 - (A) IN GENERAL, ⑈1311–1360.
 - (B) MARKMAN CONSTRUCTION IN GENERAL, ⑈1361–1370.
 - (C) PARTICULAR FIELDS OF INVENTION, ⑈1371–1430.
- VI. PATENT RIGHTS AND DUTIES, ⑈1431–1550.
 - (A) IN GENERAL, ⑈1431–1450.
 - (B) CONTRACTS IN GENERAL, ⑈1451–1460.
 - (C) ASSIGNMENTS AND OTHER TRANSFERS, ⑈1461–1480.
 - (D) LICENSES AND ROYALTIES, ⑈1481–1510.
 - (E) REGULATION OF DEALINGS IN PATENT RIGHTS AND PATENTED ARTICLES, ⑈1511–1530.
 - (F) GOVERNMENT RIGHTS AND DUTIES AS TO INVENTIONS, ⑈1531–1550.
- VII. PATENT INFRINGEMENT, ⑈1551–2040.
 - (A) IN GENERAL, ⑈1551–1630.
 - (B) PARTICULAR FIELDS OF INVENTION, ⑈1631–1690.
 - (C) ACTIONS, ⑈1691–2040.
 - 1. IN GENERAL, ⑈1691–1770.
 - 2. PLEADINGS AND MOTIONS, ⑈1771–1810.
 - 3. EVIDENCE, ⑈1811–1840.
 - 4. TRIAL, HEARING, AND DETERMINATION, ⑈1841–1860.
 - 5. RELIEF, ⑈1861–1930.
 - 6. JUDGMENT, ⑈1931–1950.
 - 7. APPELLATE REVIEW, ⑈1951–1980.
 - 8. COSTS AND FEES, ⑈1981–2010.
 - 9. OPERATION AND EFFECT OF DECISION, ⑈2011–2040.
- VIII. DESIGN PATENTS, ⑈2041–2060.
- IX. PLANT PATENTS, ⑈2061–2090.
 - (A) IN GENERAL, ⑈2061–2080.
 - (B) PLANT VARIETY PROTECTION, ⑈2081–2090.
- X. PATENTS ENUMERATED, ⑈2091–2094.

I. IN GENERAL.

- 401. In general.
- 402. Relation to other forms of intellectual property.
- 403. Constitutional and statutory provisions.
- 404. — In general; power of Congress.
- 405. — Purpose and construction in general.
- 406. — Validity.
- 407. — Retroactivity.
- 408. Preemption.
- 409. Administrative agencies; Patent and Trademark Office.
- 410. — In general.
- 411. — Proceedings in general.
- 412. — Rules and rulemaking.
- 413. — Regulation of agents and attorneys.
 - (1). In general.
 - (2). Misconduct; discipline.
- 414. — Officers and employees.

II. PATENTABILITY AND VALIDITY.

(A) IN GENERAL.

- 421. In general.
- 422. Multiple conditions of patentability.
- 423. Partial invalidity.
- 424. Estoppel to dispute validity.
- 425. — In general.
- 426. — Effect of settlement or release of invalidity claims.
- 427. — Effect of revocation, abandonment, or other termination of license.
- 428. — Assignor, grantor, or licensor.
- 429. — Assignee, grantee, or licensee.
- 430. Evidence.
- 431. Questions of law or fact.

(B) ELIGIBLE SUBJECT MATTER.

- 441. In general.
- 442. Classes of invention or discovery; statutory subject matter.
- 443. — In general.
- 444. — Processes or methods.
- 445. — Products or results.
- 446. — Manufactures.
- 447. — Machines and devices.
- 448. — Compositions of matter.
- 449. — Improvements.

291. PATENTS

II. PATENTABILITY AND VALIDITY.(Cont'd)

- 450. Exceptions to eligibility; ineligible subject matter.
- 451. — In general.
- 452. — Laws of nature, natural phenomena, and abstract ideas; fundamental principles.
- 453. — Mental steps or processes.
- 454. — Mathematical formulas and algorithms.
- 455. Use or operation of machine or apparatus as affecting process; “machine or transformation” test.
- 456. Printed matter.
- 457. Business methods.
- 458. Computers and software.
- 459. — In general.
- 460. — Data processing.
- 461. — Robots; artificial intelligence.
- 462. — Business methods; Internet applications.
- 463. Health care and medical products.
- 464. — In general.
- 465. — Drugs and medicines.
- 466. Biological subject matter; biotechnology.
- 467. — In general.
- 468. — Genes and genetic technology.
- 469. — Clones and cloning.
- 470. Evidence.
- 471. Questions of law or fact.

(C) NOVELTY; ANTICIPATION.

1. IN GENERAL.

- 481. In general; nature and necessity.
- 482. Prior knowledge or use in general.
- 483. Prior art and relation of claimed invention thereto.
- 484. — In general.
- 485. — Construction of claims and comparison with prior art in general.
- 486. — Nature, requisites, and validity of prior art in general.
- 487. — Contents and sufficiency of prior art in general.
 - (1). In general.
 - (2). Enablement.
 - (3). Incorporation by reference.

II. PATENTABILITY AND VALIDITY.(Cont'd)

- 488. — Extent of similarity or difference between prior art and claimed invention in general.
- 489. — Number of prior art references; combinations.
 - (1). In general.
 - (2). Single reference disclosing every element or limitation of claim.
- 490. — Inherent anticipation.
- 491. — Genus and species claims.
- 492. — Change in function, use, or purpose.
- 493. — Change in construction, operation, or result; improvements.
- 494. — Combination claims.
- 495. — Reduction to practice of prior art.
- 496. — Suggestions or statements by others as prior art.
- 497. — Accidental or unintentional production as prior art.
- 498. — Experiments and incomplete inventions as prior art.
- 499. — Unsuccessful and abandoned inventions as prior art.
- 500. — Accessibility to public of prior art; concealed inventions.
- 501. — Foreign prior art.
- 502. Prosecution history.
- 503. Relation between inventors; multiple patents to same inventor.
- 504. Timing issues.
- 505. Knowledge by inventor as to anticipation.

2. PARTICULAR FIELDS OF INVENTION.

- 511. Aeronautics.
- 512. Air conditioning, drying, heating, and refrigeration.
- 513. Amusements and sports.
- 514. Attaching and connecting, means of.
- 515. Automobiles and vehicles.
- 516. Biological subject matter; biotechnology.
 - 517. — In general.
 - 518. — Genes and genetic technology.
 - 519. — Clones and cloning.
 - 520. Boats; watercraft; maritime matters.
 - 521. Books, printing, and publishing.

291. PATENTS

II. PATENTABILITY AND VALIDITY.(Cont'd)

- 522. Building and paving materials and methods.
- 523. Chemicals.
- 524. — In general.
- 525. — Adhesives, paints, and solvents.
- 526. — Cleaning products.
- 527. — Cosmetics, soaps, and hair-care products.
- 528. — Pesticides and herbicides.
- 529. Clothing and textiles.
- 530. Compositions and compounds.
- 531. Computers and software.
- 532. — In general.
- 533. — Data processing.
- 534. — Robots; artificial intelligence.
- 535. — Business methods; Internet applications.
- 536. Containers and packaging.
- 537. Color, ornament, and painting.
- 538. Electricity and electronics.
- 539. — In general.
- 540. — Power generation and transmission.
- 541. — Radio and telecommunications equipment.
- 542. — Television and motion pictures.
- 543. Food and food products.
- 544. Fuels, oils, and lubricants.
- 545. Furniture and household appliances.
- 546. Health care and medical products.
- 547. — In general.
- 548. — Drugs and medicines.
- 549. — Medical devices and appliances.
- 550. — Vaccines and immunization.
- 551. — Miscellaneous particular products.
- 552. Hydraulics, pumps, and valves.
- 553. Internal combustion engines.
- 554. Lawn and garden equipment.
- 555. Machines and mechanical devices.
- 556. — In general.
- 557. — Industrial machinery and equipment.
- 558. — Industrial methods and processes.
- 559. — Farm machinery and equipment.
- 560. — Railroad cars, engines, and equipment.
- 561. — Miscellaneous particular machines and mechanical devices.

II. PATENTABILITY AND VALIDITY.(Cont'd)

- 562. Measuring, testing, and indicating devices.
- 563. Metallurgy and mining.
- 564. Photography; imaging and graphic arts.
- 565. Tobacco products; lighters.
- 566. Weapons and ammunition.
- 567. Miscellaneous products and devices.
- 568. Miscellaneous processes or methods.

3. EVIDENCE AND DETERMINATION.

- 571. In general.
- 572. Presumptions and burden of proof.
- 573. Admissibility in general.
- 574. Extrinsic evidence.
- 575. Unpublished descriptions, drawings, or models.
- 576. Applications for patents.
- 577. Degree of proof.
- 578. Weight and sufficiency.
- 579. — In general.
- 580. — Oral testimony and corroboration.
- 581. — Particular products or processes.
- 582. Questions of law or fact.

4. PRIOR DESCRIPTION IN PRINTED PUBLICATION.

- 591. In general.
- 592. Requisites of publication.
- 593. — In general.
- 594. — Printing.
- 595. — Accessibility.
- 596. — Online or electronic publication.
- 597. Sufficiency of description.
- 598. — In general.
- 599. — Enablement.
- 600. — Incorporation by reference.
- 601. — Inherent anticipation.
- 602. Particular products or processes.
- 603. Evidence.
- 604. Questions of law or fact.

5. PRIOR PUBLIC USE OR SALE.

- 611. In general; nature, purpose, and elements of statutory bar.
- 612. What constitutes public use.
- 613. — In general.
- 614. — Accessibility to public.
- 615. — Commercial exploitation.
- 616. What constitutes sale.

291. PATENTS

II. PATENTABILITY AND VALIDITY.(Cont'd)

- 617. — In general.
- 618. — Attempts to sell; offers.
- 619. — Completion of sale; acceptance and delivery.
- 620. Number of uses or sales.
- 621. Persons making use or sale.
- 622. Concealment of use or sale; secrecy.
- 623. — In general.
- 624. — Limitation, restriction, or obligation of secrecy; confidentiality.
- 625. Use or sale in foreign country.
- 626. Completion of prior invention; “ready for patenting” requirement.
- 627. — In general.
- 628. — Experimental use or purpose.
- 629. Relation between prior and claimed inventions; identity.
- 630. Timing issues.
- 631. Particular products or processes.
- 632. — In general.
- 633. — Public use.
- 634. — Sale.
- 635. Evidence.
- 636. — In general.
- 637. — Presumptions and burden of proof.
- 638. — Degree of proof.
- 639. — Weight and sufficiency.
 - (1). In general.
 - (2). Particular products or processes.
 - (3). — In general.
 - (4). — Public use.
 - (5). — Sale.
- 640. Questions of law or fact.

(D) UTILITY.

- 651. In general; nature and necessity.
- 652. Beneficial utility.
- 653. Capacity to produce result; operability.
- 654. Particular products or processes.
- 655. — In general.
- 656. — Health care, medical products, and biotechnology.
- 657. Evidence.
- 658. — In general.
- 659. — Presumptions and burden of proof.
- 660. — Degree of proof.
- 661. — Weight and sufficiency.
 - (1). In general.

II. PATENTABILITY AND VALIDITY.(Cont'd)

- (2). Particular products or processes.
- (3). — In general.
- (4). — Health care, medical products, and biotechnology.
- 662. Questions of law or fact.
- (E) OBVIOUSNESS; LACK OF INVENTION.
 - 1. IN GENERAL.
 - 671. In general.
 - 672. Necessity of nonobviousness or invention.
 - 2. FACTORS CONSIDERED.
 - 681. In general; multiple factors.
 - 682. Prior art and relation of claimed invention thereto.
 - 683. — In general.
 - 684. — Analogous art.
 - 685. — Combination of prior art references; “teaching, suggestion, or motivation” test.
 - 686. — Teaching away from prior art reference.
 - 687. — Expectation or probability of success; predictability.
 - 688. — Contributions of others; final step in series.
 - 689. — Results and means of producing.
 - 690. — New or specialized functions or properties.
 - 691. — New use or application.
 - 692. — Remedying defects or solving problems.
 - 693. — Change in degree or form.
 - 694. — Choice of elements; substitutions.
 - 695. — Omission, duplication, or multiplication of elements.
 - 696. — Combination of elements.
 - (1). In general.
 - (2). Cooperation of elements; synergism.
 - (3). New result.
 - 697. Level of ordinary skill in the art.
 - 698. — In general.
 - 699. — Mechanical skill.
 - 700. Secondary factors or considerations; objective indicia or evidence.
 - 701. — In general; multiple factors.

291. PATENTS

II. PATENTABILITY AND VALIDITY.(Cont'd)

- 702. — Imitation or copying.
- 703. — Failure of others.
- 704. — Longstanding need and solution to problems.
- 705. — Recognition or acclamation.
- 706. — Simultaneous invention.
- 707. — Skepticism of experts.
- 708. — Unexpected results.
- 709. — Commercial success.
 - (1). In general.
 - (2). Close or doubtful cases.
 - (3). Nexus to claimed invention.
 - (4). Licensing of invention.
 - (5). Absence of invention.
 - (6). Success attributable to other causes.
 - (7). Lack of success.
- 710. Subjective tests; manner in which invention was made.
- 711. — In general.
- 712. — Genius or ingenuity.
- 713. — Nature and degree of effort required.
- 714. Simplicity.
- 715. Completeness; reduction to practice.
- 716. Manner of evaluation.
- 717. — In general.
- 718. — Evaluation of claimed invention as a whole.
- 719. — Dependent and independent claims.
- 720. Time of evaluation; hindsight.

3. PARTICULAR FIELDS OF INVENTION.

- 731. Aeronautics.
- 732. Air conditioning, drying, heating, and refrigeration.
- 733. Amusements and sports.
- 734. Attaching and connecting, means of.
- 735. Automobiles and vehicles.
- 736. Biological subject matter; biotechnology.
 - 737. — In general.
 - 738. — Genes and genetic technology.
 - 739. — Clones and cloning.
 - 740. Boats; watercraft; maritime matters.
 - 741. Books, printing, and publishing.

II. PATENTABILITY AND VALIDITY.(Cont'd)

- 742. Building and paving materials and methods.
- 743. Chemicals.
 - 744. — In general.
 - 745. — Adhesives, paints, and solvents.
 - 746. — Cleaning products.
 - 747. — Cosmetics, soaps, and hair-care products.
 - 748. — Pesticides and herbicides.
- 749. Clothing and textiles.
- 750. Compositions and compounds.
- 751. Computers and software.
- 752. — In general.
- 753. — Data processing.
- 754. — Robots; artificial intelligence.
- 755. — Business methods; Internet applications.
- 756. Containers and packaging.
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- 758. Electricity and electronics.
- 759. — In general.
- 760. — Power generation and transmission.
- 761. — Radio and telecommunications equipment.
- 762. — Television and motion pictures.
- 763. Food and food products.
- 764. Fuels, oils, and lubricants.
- 765. Furniture and household appliances.
- 766. Health care and medical products.
- 767. — In general.
- 768. — Drugs and medicines.
- 769. — Medical devices and appliances.
- 770. — Vaccines and immunization.
- 771. — Miscellaneous particular products.
- 772. Hydraulics, pumps, and valves.
- 773. Internal combustion engines.
- 774. Lawn and garden equipment.
- 775. Machines and mechanical devices.
- 776. — In general.
- 777. — Industrial machinery and equipment.
- 778. — Industrial methods and processes.
- 779. — Farm machinery and equipment.
- 780. — Railroad cars, engines, and equipment.
- 781. — Miscellaneous particular machines and mechanical devices.

291. PATENTS

II. PATENTABILITY AND VALIDITY.(Cont'd)

- 782. Measuring, testing, and indicating devices.
- 783. Metallurgy and mining.
- 784. Photography; imaging and graphic arts.
- 785. Tobacco products; lighters.
- 786. Weapons and ammunition.
- 787. Miscellaneous products and devices.
- 788. Miscellaneous processes or methods.

4. EVIDENCE AND DETERMINATION.

- 791. In general.
- 792. Presumptions and burden of proof.
- 793. Admissibility of evidence.
- 794. Degree of proof.
- 795. Weight and sufficiency of evidence.
- 796. — In general.
- 797. — Corroboration.
- 798. — Expert opinion.
- 799. — Particular products or processes.
- 800. Questions of law or fact.

(F) OTHER CHALLENGES TO VALIDITY.

- 811. In general.
- 812. Knowledge or appreciation of inventors.
- 813. Public policy, fraud, and illegality.
- 814. Fraudulent suppression.
- 815. Ambiguity, uncertainty, or indefiniteness.
- 816. — In general.
- 817. — Particularity and distinctness.
- 818. — Lack of antecedent basis.
- 819. — Errors and omissions.
- 820. — Necessity of independent experiments.
- 821. — Principles and mode of operation.
- 822. — Particular products or processes.
- 823. — Evidence.
 - (1). In general.
 - (2). Weight and sufficiency.
- 824. — Questions of law or fact.
- 825. Multiple inventions included in same patent.
- 826. Multiple patents for same invention; double patenting.
- 827. — In general.
- 828. — Obvious variant of invention claimed in prior application.

II. PATENTABILITY AND VALIDITY.(Cont'd)

- 829. — Claim not patentably distinct from prior claims.
- 830. — Genus and species.
- 831. — Restriction and election.
- 832. — Particular products or processes.
- 833. — Evidence.
 - (1). In general.
 - (2). Weight and sufficiency.
- 834. — Questions of law or fact.
- 835. Multiple patents for parts of same invention.
- 836. Excessive claims.
- 837. Abandonment of invention.
- 838. — In general.
- 839. — Unclaimed subject matter; disclosure and dedication.
- 840. — Delay in making or prosecuting application for patent.
- 841. — Time of abandonment.
- 842. — Evidence.
- 843. — Questions of law or fact.
- 844. Delay between application and issue.

III. PERSONS ENTITLED TO PATENTS.

(A) IN GENERAL.

- 851. In general.
- 852. Employers and workers.
- 853. Public employees and officials.
- 854. Assignees of inventors.
- 855. Personal representatives of deceased inventors.
- 856. Aliens.

(B) INVENTORSHIP AND PRIORITY.

- 861. In general.
- 862. Conception of invention.
- 863. Priority of filing application.
- 864. Diligence.
- 865. — In general; necessity.
- 866. — What constitutes diligence.
- 867. — Suppression or concealment of invention.
- 868. Excuses for delay.
- 869. Reduction of invention to practice.
- 870. — In general.
- 871. — Demonstration of utility; tests.
- 872. — Constructive reduction to practice.
- 873. — Particular inventions.

291. PATENTS

III. PERSONS ENTITLED TO PATENTS.(Cont'd)

- 874. Models, drawings, or descriptions.
- 875. Suggestions to inventor and outside aid; derivation.
- 876. Evidence.
- 877. — In general.
- 878. — Presumptions and burden of proof.
- 879. — Admissibility.
- 880. — Degree of proof.
- 881. — Weight and sufficiency.
 - (1). In general; corroboration.
 - (2). Particular cases.
- 882. Questions of law or fact.

(C) JOINT INVENTORS.

- 891. In general.
- 892. Misjoinder or nonjoinder.
- 893. Particular inventions.
- 894. Evidence.
- 895. Questions of law or fact.

IV. PATENT APPLICATIONS AND PROCEEDINGS.

(A) IN GENERAL.

- 901. In general.
- 902. Requisites of application in general.
- 903. Provisional application.
- 904. Specification.
- 905. — In general.
- 906. — Best mode.
 - (1). In general.
 - (2). Subjective preference.
 - (3). Concealment.
 - (4). Particular products or processes.
 - (5). Evidence.
 - (6). Questions of law or fact.
- 907. — Written description requirement.
 - (1). In general.
 - (2). Disclosure as directed to one skilled in the art.
 - (3). Possession of claimed invention.
 - (4). Specific embodiment.
 - (5). Genus and species.
 - (6). Particular products or processes.
 - (7). Evidence.
 - (8). — In general.
 - (9). — Weight and sufficiency.
 - (10). Questions of law or fact.

IV. PATENT APPLICATIONS AND PROCEEDINGS.(Cont'd)

- 908. — Enablement requirement.
 - (1). In general.
 - (2). Undue experimentation.
 - (3). Particular products or processes.
 - (4). Evidence in general.
 - (5). Weight and sufficiency of evidence.
 - (6). Questions of law or fact.
- 909. Drawings, specimens, models, or photographs.
- 910. Assertion of claims.
- 911. — In general.
- 912. — Preamble.
- 913. — Independent or dependent claims.
- 914. — Requisites and sufficiency.
- 915. — Functions, means, and results of invention.
- 916. — Improvement claims.
- 917. — Markush grouping.
- 918. — Combination claims.
- 919. — Step-plus-function claims.
- 920. — Process or method claims.
- 921. — Composition claims.
- 922. Signature, attestation, and oath.
- 923. Fees.
- 924. — In general.
- 925. — Maintenance fees.
- 926. — Reinstatement of expired patent.
- 927. Information disclosure statements.
- 928. Confidential status of applications.

(B) EXAMINATION.

- 931. In general.
- 932. Advancing or suspending action on applications.
- 933. Objections and protests.
- 934. Overcoming prior art references.
- 935. — In general.
- 936. — Benefit of earlier filing date.
 - (1). In general.
 - (2). Same invention by same inventor.
 - (3). Earlier foreign application.
- 937. — Affidavit or declaration of prior invention.
- 938. Notice of rejection of claims.
- 939. Responding to examiner's action on application.

291. PATENTS

IV. PATENT APPLICATIONS AND PROCEEDINGS.(Cont'd)

- 940. — In general.
- 941. — Affidavit or declaration traversing grounds of rejection.
- 942. — Restriction requirement.
- 943. Withdrawal or abandonment of application.
- 944. — In general.
- 945. — Revival.
- 946. Amendment of application.
- 947. — In general.
- 948. — Laches; late claiming.
- 949. — New matter disallowed.
- 950. — Correction of errors.
- 951. Renewal of application.
- 952. — In general.
- 953. — Continuation or divisional application.
- 954. Reconsideration or continued examination.
- 955. Interferences.
- 956. — In general.
- 957. — Preliminary statements, issues of interference, and amendments.
- 958. — Evidence and witnesses.
- 959. — Continuance.
- 960. — Dissolution of interferences.
- 961. — Civil actions.
- 962. Derivation proceedings; derived patents.

(C) ADMINISTRATIVE REVIEW.

- 1001. In general.
- 1002. Review by Director (formerly Commissioner) of Patent and Trademark Office.
- 1003. — In general.
- 1004. — Grounds.
- 1005. — Filing of petition or other request for review; time.
- 1006. — Hearing and determination.
- 1007. — Suspension or waiver of rules.
- 1008. Review by Patent Trial and Appeal Board (formerly Board of Patent Appeals and Interferences).
- 1009. — In general.
- 1010. — Reviewing rejection of claims.
- 1011. — Filing of appeal or other request for review; time.
- 1012. — Answer and reply.

IV. PATENT APPLICATIONS AND PROCEEDINGS.(Cont'd)

- 1013. — Hearing and determination.
- 1014. — Rehearing or reconsideration.

(D) CONCLUSIVENESS AND EFFECT OF ADMINISTRATIVE DECISIONS.

- 1101. In general.
- 1102. Presumption of correctness in general.
- 1103. As to patentability and validity.
- 1104. — In general.
- 1105. — Eligible subject matter.
- 1106. — Novelty; anticipation.
- 1107. — Utility.
- 1108. — Obviousness; lack of invention.
- 1109. As to persons entitled to patents.
- 1110. — In general.
- 1111. — Inventorship and priority.
- 1112. — Interference estoppel.
- 1113. As to application and procedure in obtaining patent.
- 1114. — In general.
- 1115. — Specification.
- 1116. Sufficiency of evidence to offset effect of decision.
- 1117. — In general.
- 1118. — Corroboration.
- 1119. — Degree of proof.
- 1120. — Particular cases.

(E) JUDICIAL REVIEW OR INTERVENTION.

- 1131. In general.
- 1132. Decisions reviewable; finality.
- 1133. Persons entitled to seek review or assert arguments; parties; standing.
- 1134. Filing of appeal or other request for review; time.
- 1135. Proceedings on review; record.
- 1136. Dismissal, withdrawal, or abandonment.
- 1137. Scope of review.
- 1138. — In general.
- 1139. — New grounds for rejection.
- 1140. — Presumption as to correctness of decision below.
- 1141. — Judicial notice.
- 1142. — Harmless error.
- 1143. Determination and disposition of cause.
- 1144. Rehearing or reconsideration.

291. PATENTS

(F) CIVIL ACTION TO OBTAIN PATENT.

- 1151. In general; nature of remedy.
- 1152. Jurisdiction and venue.
- 1153. Who may maintain action.
- 1154. Time to sue and limitations.
- 1155. Election and waiver of remedy.
- 1156. Parties; notice.
- 1157. Pleadings.
- 1158. — In general.
- 1159. — Amendment.
- 1160. — Variance between pleadings and proof.
- 1161. Discovery.
- 1162. Preliminary injunction and other interlocutory relief.
- 1163. Hearing and scope of inquiry.
- 1164. — In general.
- 1165. — Trial de novo.
- 1166. — Review of findings.
- 1167. — Exhaustion of administrative remedies.
- 1168. — Claims and other matters not presented to or passed on by Patent and Trademark Office.
- 1169. — Weight given to Patent and Trademark Office decisions.
- 1170. Evidence.
- 1171. — In general.
- 1172. — Presumptions and burden of proof.
- 1173. — Admissibility.
- 1174. — Weight and sufficiency.
- 1175. Determination and disposition.
- 1176. Costs and fees.
- 1177. Appellate review.

(G) POSTISSUANCE PROCEEDINGS.

1. IN GENERAL.

- 1181. In general.
- 1182. Correction or amendment in general.
- 1183. Certificate of correction.
- 1184. Correction of named inventor.
- 1185. — In general; grounds.
- 1186. — Time for correction; laches.
- 1187. — Application and proceedings.
- 1188. — Court-ordered correction.

2. DISCLAIMERS.

- 1191. In general.

IV. PATENT APPLICATIONS AND PROCEEDINGS.(Cont'd)

- 1192. Patents and claims as subjects of disclaimer.
- 1193. Grounds; relationship to reissue.
- 1194. Persons entitled to disclaim.
- 1195. Time for disclaimer; effect of delay.
- 1196. Requisites and sufficiency.
- 1197. Construction and operation.
- 1198. Terminal disclaimer.
- 1199. Effect of neglect or failure to disclaim.

3. REISSUES.

- 1201. In general; power to reissue.
- 1202. Reissue for invention disclosed in original patent.
- 1203. Grounds.
- 1204. Persons entitled to reissue.
- 1205. Time for proceedings.
- 1206. — In general.
- 1207. — Enlarged or broadened claims.
- 1208. — Laches.
- 1209. Surrender of original patent.
- 1210. Application and proceedings.
- 1211. Evidence.
- 1212. — In general.
- 1213. — Presumptions and burden of proof.
- 1214. Identity of invention.
- 1215. — In general.
- 1216. — Correction or amendment of specifications in general.
- 1217. — Enlargement of claims; new matter.
 - (1). In general.
 - (2). Claiming matter suggested but not claimed in original application.
 - (3). Claiming matter abandoned, disclaimed, or rejected on original application.
 - (4). Particular inventions.
- 1218. — Narrowing claims.
- 1219. Multiple reissues; reissues for parts of original invention.
- 1220. Conclusiveness and effect of administrative decisions.
- 1221. Administrative review.
- 1222. Judicial review or intervention.
- 1223. Civil action for refusal of reissue.
- 1224. Validity of reissued patents.

291. PATENTS

IV. PATENT APPLICATIONS AND PROCEEDINGS.(Cont'd)

- 1225. — In general.
- 1226. — Novelty; anticipation.
- 1227. — Obviousness; lack of invention.
- 1228. Construction and operation of reissued patents.
- 1229. — In general.
- 1230. — Intervening rights defense.
- 1231. — Effect as estoppel.

4. EX PARTE REEXAMINATION.

- 1241. In general.
- 1242. Citation of prior art and written statements.
- 1243. Grounds.
- 1244. Time for proceedings.
- 1245. Request for reexamination.
- 1246. Conduct of reexamination proceedings; scope of inquiry.
- 1247. Determination and order.
- 1248. Issuance of reexamination certificate.
- 1249. Conclusiveness and effect of administrative decisions.
- 1250. Administrative review.
- 1251. Judicial review or intervention.
- 1252. Validity of reexamined patent.
- 1253. Construction and operation of reexamined patents.
- 1254. — In general.
- 1255. — Intervening rights defense.
- 1256. — Effect as estoppel.

5. OTHER POSTISSUANCE PROCEEDINGS.

- 1261. In general.
- 1262. Inter partes review.
- 1263. Post-grant review.

6. PATENT ANNULLED OR CANCELLED AS VOID.

- 1271. In general.
- 1272. Grounds.
- 1273. Government suit in equity.
- 1274. Relation to other proceedings.
- 1275. Evidence.

7. PATENT FOUND UNENFORCEABLE FOR INEQUITABLE CONDUCT.

- 1281. In general.
- 1282. Materiality in general.
- 1283. Intent to deceive in general.

IV. PATENT APPLICATIONS AND PROCEEDINGS.(Cont'd)

- 1284. Misrepresentation of material fact.
- 1285. Failure to disclose material information.
- 1286. Conduct during postissuance proceedings.
- 1287. Evidence.
- 1288. Determination.
- 1289. — In general.
- 1290. — Summary judgment.

(H) INTERNATIONAL PATENT APPLICATIONS.

- 1301. In general.
- 1302. Proceedings.

V. CONSTRUCTION AND OPERATION OF PATENTS.

(A) IN GENERAL.

- 1311. In general.
- 1312. Intrinsic evidence in general.
- 1313. Multiple sources for construction.
- 1314. Claims and limitations; language of patent.
- 1315. — In general.
- 1316. — Language of claims in general.
- 1317. — Plain, ordinary, or customary meaning in general.
- 1318. — Construction to give validity and effect to patent and claims.
- 1319. — Claims as measure of patentee's rights.
- 1320. — Context.
- 1321. — Transitional phrases; open-ended claims.
- 1322. — Reading limitations or elements into claims, or disregarding limitations or elements.
- 1323. — Preamble.
- 1324. — Preferred embodiment in general.
- 1325. — Construction of particular claims as affected by other claims.
 - (1). In general.
 - (2). Dependent and independent claims.
 - (3). Claim differentiation.
- 1326. — Title of patent.
- 1327. Specifications and drawings; written description.
- 1328. — In general.

291. PATENTS

V. CONSTRUCTION AND OPERATION OF PATENTS.(Cont'd)

- 1329. — Specification as limiting or enlarging claims in general.
- 1330. — Necessity of specifying results or advantages of invention.
- 1331. — Specification disclaimer.
- 1332. — Preferred embodiment.
- 1333. — Effect of drawings, diagrams, and models.
- 1334. — Effect of reference in claims to specifications or drawings.
- 1335. Accompanying documents and proceedings in Patent and Trademark Office.
- 1336. — In general.
- 1337. — Examination of application in general.
- 1338. — Rejection and amendment of claims; prosecution history.
 - (1). In general.
 - (2). Estoppel in general; prosecution history estoppel.
 - (3). File wrapper.
 - (4). Prosecution disclaimer.
 - (5). Voluntary or unnecessary amendment or cancellation.
 - (6). Amendments not changing substance of claims.
 - (7). Erroneous rejection of claims.
 - (8). Strict or liberal construction of claims allowed.
 - (9). Extent of estoppel as affected by examiner's objections or references.
 - (10). Particular patents and claims.
- 1339. — Reexamination and inter partes review proceedings.
- 1340. Litigation affecting patent.
- 1341. State of the art.
- 1342. Intent.
- 1343. Contemporaneous construction.
- 1344. Extrinsic evidence.
- 1345. — In general.
- 1346. — Dictionaries, encyclopedias, treatises, and other reference works.
- 1347. — Expert and inventor testimony.
- 1348. Scope and character of invention.
- 1349. — In general.
- 1350. — Primary and pioneer inventions.

V. CONSTRUCTION AND OPERATION OF PATENTS.(Cont'd)

- 1351. — Improvements.
- 1352. — Processes or methods.
- 1353. — Products or devices.
- 1354. — Combinations.
- 1355. — Range of equivalents.
- 1356. — Compositions of matter.
- 1357. Effect of patent as estoppel.
- 1358. Effect of patent as notice.

(B) MARKMAN CONSTRUCTION IN GENERAL.

- 1361. In general.
- 1362. Generic clauses.

(C) PARTICULAR FIELDS OF INVENTION.

- 1371. Aeronautics.
- 1372. Air conditioning, drying, heating, and refrigeration.
- 1373. Amusements and sports.
- 1374. Attaching and connecting, means of.
- 1375. Automobiles and vehicles.
- 1376. Biological subject matter; biotechnology.
- 1377. — In general.
- 1378. — Genes and genetic technology.
- 1379. — Clones and cloning.
- 1380. Boats; watercraft; maritime matters.
- 1381. Books, printing, and publishing.
- 1382. Building and paving materials and methods.
- 1383. Chemicals.
- 1384. — In general.
- 1385. — Adhesives, paints, and solvents.
- 1386. — Cleaning products.
- 1387. — Cosmetics, soaps, and hair-care products.
- 1388. — Pesticides and herbicides.
- 1389. Clothing and textiles.
- 1390. Compositions and compounds.
- 1391. Computers and software.
- 1392. — In general.
- 1393. — Data processing.
- 1394. — Robots; artificial intelligence.
- 1395. — Business methods; Internet applications.
- 1396. Containers and packaging.
- 1397. Color, ornament, and painting.
- 1398. Electricity and electronics.

291. PATENTS

V. CONSTRUCTION AND OPERATION OF PATENTS.(Cont'd)

- 1399. — In general.
- 1400. — Power generation and transmission.
- 1401. — Radio and telecommunications equipment.
- 1402. — Television and motion pictures.
- 1403. Food and food products.
- 1404. Fuels, oils, and lubricants.
- 1405. Furniture and household appliances.
- 1406. Health care and medical products.
- 1407. — In general.
- 1408. — Drugs and medicines.
- 1409. — Medical devices and appliances.
- 1410. — Vaccines and immunization.
- 1411. — Miscellaneous particular products.
- 1412. Hydraulics, pumps, and valves.
- 1413. Internal combustion engines.
- 1414. Lawn and garden equipment.
- 1415. Machines and mechanical devices.
- 1416. — In general.
- 1417. — Industrial machinery and equipment.
- 1418. — Industrial methods and processes.
- 1419. — Farm machinery and equipment.
- 1420. — Railroad cars, engines, and equipment.
- 1421. — Miscellaneous particular machines and mechanical devices.
- 1422. Measuring, testing, and indicating devices.
- 1423. Metallurgy and mining.
- 1424. Photography; imaging and graphic arts.
- 1425. Tobacco products; lighters.
- 1426. Weapons and ammunition.
- 1427. Miscellaneous products and devices.
- 1428. Miscellaneous processes or methods.

VI. PATENT RIGHTS AND DUTIES.

(A) IN GENERAL.

- 1431. In general; nature of ownership of patents.
- 1432. Title of inventor before issuance of patent.
- 1433. Assignment of invention or right to patent.
- 1434. Exclusive nature of right.

VI. PATENT RIGHTS AND DUTIES.(Cont'd)

- 1435. — In general.
- 1436. — Articles made, used, or purchased by others before application for patent.
- 1437. Territorial extent of rights.
- 1438. Quieting title to patents.
- 1439. Scope of exclusive rights as to making, use, or sale of invention.
- 1440. — In general.
- 1441. — Monopoly powers in general.
- 1442. — Patent exhaustion; effect of first sale.
- 1443. — Publicizing patent in marketplace.
- 1444. — Rights and powers of nonpracticing entities; "patent trolls".
- 1445. Joint owners.
- 1446. Term and duration.
- 1447. — In general.
- 1448. — Limitation to term of prior foreign patent.
- 1449. — Extension.
 - (1). In general.
 - (2). Regulatory review.
 - (3). Adjustment for delay during prosecution.
 - (4). Civil action to obtain extension.

(B) CONTRACTS IN GENERAL.

- 1451. In general.
- 1452. Implied in fact contracts.
- 1453. Settlement or release of infringement claims.
- 1454. Construction and operation.
- 1455. Performance and breach.
- 1456. Rights and remedies of contractor.
- 1457. — In general.
- 1458. — Summary judgment.
- 1459. — Injunctions.

(C) ASSIGNMENTS AND OTHER TRANSFERS.

- 1461. In general; assignability of patents.
- 1462. What law governs.
- 1463. Persons who may assign.
- 1464. Agreements to assign.
- 1465. Requisites and validity of assignments and grants.
- 1466. — In general.
- 1467. — Form and contents.

291. PATENTS

VI. PATENT RIGHTS AND DUTIES.(Cont'd)

- 1468. — Execution and delivery.
- 1469. — Recording.
- 1470. — Annulment or cancellation.
- 1471. — Evidence of assignment.
- 1472. Construction and operation of assignments and grants.
- 1473. — In general.
- 1474. — Effect as estoppel.
- 1475. Rights and liabilities of assignees and grantees.
- 1476. Transfer on insolvency.
- 1477. Transfer by succession or inheritance.

(D) LICENSES AND ROYALTIES.

- 1481. In general; nature of license.
- 1482. What law governs.
- 1483. Persons who may grant license.
- 1484. Requisites and validity of licenses.
- 1485. — In general.
- 1486. — Express licenses.
 - (1). In general.
 - (2). Recording.
- 1487. — Implied license.
- 1488. Construction and operation of licenses.
- 1489. — In general.
- 1490. — Exclusive or nonexclusive licensee.
- 1491. — Duration of license.
- 1492. — Effect as estoppel.
- 1493. Revocation, forfeiture, or other termination of license.
- 1494. Assignments and sublicenses.
- 1495. Rights, remedies, and liabilities of licensees.
- 1496. — In general.
- 1497. — Breach of license agreement.
- 1498. — Actions and proceedings in general.
- 1499. — Parties.
- 1500. — Pleading.
- 1501. — Evidence.
- 1502. — Summary judgment.
- 1503. — Trial.
- 1504. — Injunctions.
- 1505. Rights and remedies as to third parties.
- 1506. Royalties.
- 1507. — In general.
- 1508. — Rights and liabilities of parties.

VI. PATENT RIGHTS AND DUTIES.(Cont'd)

- (1). In general.
 - (2). Accrual of right to royalty.
 - (3). When liability for royalty ceases.
 - (4). Effect of patent invalidity.
 - (5). Persons liable for royalties.
 - (6). Amount of royalty.
- 1509. — Actions and proceedings.
 - (1). In general.
 - (2). Right of action and defenses.
 - (3). Time to sue and limitations.
 - (4). Parties.
 - (5). Pleading.
 - (6). Reference to master.
 - (7). Evidence.
 - (8). Trial.
 - (9). Judgment in general.
 - (10). Summary judgment.
 - (11). Remedies in general.
 - (12). Accounting for royalties.
 - (13). Injunctions.

(E) REGULATION OF DEALINGS IN PATENT RIGHTS AND PATENTED ARTICLES.

- 1511. In general; power to control and regulate.
- 1512. Regulation of sale of patent rights.
- 1513. Validity of transactions.
- 1514. Marking patented articles; notice.
- 1515. — In general.
- 1516. — What is false marking or mis-marking.
- 1517. — Marking estoppel.
- 1518. Penalties; qui tam suits.
- 1519. — In general.
- 1520. — Actions and proceedings.
- 1521. — Evidence.
- 1522. Offenses and prosecutions.

(F) GOVERNMENT RIGHTS AND DUTIES AS TO INVENTIONS.

- 1531. In general.
- 1532. Inventions by government contractors.
- 1533. — In general.
- 1534. — March-in rights; compulsory licensing.
- 1535. — Waiver of agency interest in invention.
- 1536. Inventions by government employees.

291. PATENTS

VI. PATENT RIGHTS AND DUTIES.(Cont'd)

- 1537. Licensing government-owned inventions.
- 1538. Secrecy orders.
- 1539. — In general.
- 1540. — Issuance and review of order.
- 1541. — License for application in foreign country.
- 1542. — Modification or rescission.
- 1543. — Compensation to inventor for withholding of patent.

VII. PATENT INFRINGEMENT.

(A) IN GENERAL.

- 1551. In general.
- 1552. Nature and elements of injury.
- 1553. What law governs.
- 1554. Substantial identity of subject matter.
- 1555. — In general; comparison with patent claims.
- 1556. — Function, means, operation, and result.
- 1557. — Other matters.
- 1558. Existence and validity of patent.
- 1559. Intent or purpose, and knowledge.
- 1560. — In general.
- 1561. — Willful infringement.
- 1562. Patents for processes and methods.
- 1563. — In general.
- 1564. — Identity in general.
- 1565. — Substitution of equivalents.
- 1566. — Identity of result.
- 1567. — Use of process.
- 1568. Patents for machines, products, or devices.
- 1569. — In general.
- 1570. — Identity in general.
- 1571. — Identity of principle or mode of operation.
- 1572. — Identity of form or position.
- 1573. — Identity of arrangement.
- 1574. — Substitution of equivalents.
 - (1). In general.
 - (2). Reverse doctrine of equivalents.
 - (3). Ensnarement.
 - (4). Vitiating test.
 - (5). Prosecution history estoppel as limiting range of equivalents.
- 1575. — Omission of parts.

VII. PATENT INFRINGEMENT.(Cont'd)

- 1576. — Addition of parts.
- 1577. — Improvements.
- 1578. — Identity of result.
- 1579. Patents for combinations.
- 1580. — In general.
- 1581. — Identity in general.
 - (1). In general.
 - (2). Identity of mode of operation.
 - (3). Identity of form.
- 1582. — Transposition of elements.
- 1583. — Substitution of equivalents.
- 1584. — Omission of elements.
- 1585. — Addition of elements.
- 1586. — Improvements.
- 1587. Patents for compositions of matter.
- 1588. — In general.
- 1589. — Identity in general.
- 1590. — Filing of applications for drug approval.
- 1591. — Substitution of ingredients.
- 1592. Utility of infringing device.
- 1593. Experimental use.
- 1594. Making, repair of, or substitute for patented article.
- 1595. Violation of restrictions on resale of patented articles sold.
- 1596. Importation and sale or use of imported article.
- 1597. Indirect infringement.
- 1598. — In general.
- 1599. — Contributory infringement in general.
- 1600. — Inducement to infringe.
- 1601. — Vicarious liability; agency.
- 1602. — Manufacture and sale of articles to be used with patented article.
- 1603. — Manufacture and sale of articles to be used in manufacture of patented article.
- 1604. Extent of use.
- 1605. — In general.
- 1606. — Experimental testing.
- 1607. — Temporary presence in United States.
- 1608. — Safe harbor for drug development.
- 1609. — Medical activity exception.
- 1610. Defenses.

291. PATENTS

VII. PATENT INFRINGEMENT.(Cont'd)

- 1611. — In general.
- 1612. — Discontinuance of infringement.
- 1613. — Invalidity of patent.
- 1614. — Misconduct by patentee in general.
- 1615. — Misuse of patent.
- 1616. — Acquiescence.
- 1617. — License.
- 1618. — Prior commercial use.
- 1619. — Estoppel.
- 1620. — Waiver.

(B) PARTICULAR FIELDS OF INVENTION.

- 1631. Aeronautics.
- 1632. Air conditioning, drying, heating, and refrigeration.
- 1633. Amusements and sports.
- 1634. Attaching and connecting, means of.
- 1635. Automobiles and vehicles.
- 1636. Biological subject matter; biotechnology.
- 1637. — In general.
- 1638. — Genes and genetic technology.
- 1639. — Clones and cloning.
- 1640. Boats; watercraft; maritime matters.
- 1641. Books, printing, and publishing.
- 1642. Building and paving materials and methods.
- 1643. Chemicals.
- 1644. — In general.
- 1645. — Adhesives, paints, and solvents.
- 1646. — Cleaning products.
- 1647. — Cosmetics, soaps, and hair-care products.
- 1648. — Pesticides and herbicides.
- 1649. Clothing and textiles.
- 1650. Compositions and compounds.
- 1651. Computers and software.
- 1652. — In general.
- 1653. — Data processing.
- 1654. — Robots; artificial intelligence.
- 1655. — Business methods; Internet applications.
- 1656. Containers and packaging.
- 1657. Color, ornament, and painting.
- 1658. Electricity and electronics.
- 1659. — In general.

VII. PATENT INFRINGEMENT.(Cont'd)

- 1660. — Power generation and transmission.
- 1661. — Radio and telecommunications equipment.
- 1662. — Television and motion pictures.
- 1663. Food and food products.
- 1664. Fuels, oils, and lubricants.
- 1665. Furniture and household appliances.
- 1666. Health care and medical products.
- 1667. — In general.
- 1668. — Drugs and medicines.
- 1669. — Medical devices and appliances.
- 1670. — Vaccines and immunization.
- 1671. — Miscellaneous particular products.
- 1672. Hydraulics, pumps, and valves.
- 1673. Internal combustion engines.
- 1674. Lawn and garden equipment.
- 1675. Machines and mechanical devices.
- 1676. — In general.
- 1677. — Industrial machinery and equipment.
- 1678. — Industrial methods and processes.
- 1679. — Farm machinery and equipment.
- 1680. — Railroad cars, engines, and equipment.
- 1681. — Miscellaneous particular machines and mechanical devices.
- 1682. Measuring, testing, and indicating devices.
- 1683. Metallurgy and mining.
- 1684. Photography; imaging and graphic arts.
- 1685. Tobacco products; lighters.
- 1686. Weapons and ammunition.
- 1687. Miscellaneous products and devices.
- 1688. Miscellaneous processes or methods.

(C) ACTIONS.

1. IN GENERAL.

- 1691. In general; nature and grounds.
- 1692. Conditions precedent.
- 1693. Abatement on death of party.
- 1694. Joinder of causes of action.
- 1695. Persons entitled to sue; standing.
- 1696. — In general.
- 1697. — Patent owner.
- 1698. — Assignee or transferee.
- 1699. — Licensee in general.

291. PATENTS

VII. PATENT INFRINGEMENT.(Cont'd)

- 1700. — Exclusive licensee.
- 1701. — Bare or nonexclusive licensee.
- 1702. Persons liable.
- 1703. — In general.
- 1704. — Joint infringers; contribution.
- 1705. — Agency in general and acts of third persons.
- 1706. — Government, agencies, and officers.
- 1707. — Corporations.
 - (1). In general.
 - (2). Parents and subsidiaries.
 - (3). Successor liability.
- 1708. — Corporate officers, agents, and stockholders.
- 1709. — Associations and partnerships.
- 1710. — Limited liability companies.
- 1711. — Licensees.
- 1712. Jurisdiction.
- 1713. — In general.
- 1714. — Legal or equitable jurisdiction.
- 1715. — Expiration of patent.
- 1716. — Personal jurisdiction in general.
- 1717. — Residence and place of infringement; long-arm jurisdiction.
 - (1). In general.
 - (2). Minimum contacts.
 - (3). Tortious act, conduct, or injury.
- 1718. — Regular and established place of business; doing business.
 - (1). In general.
 - (2). Transacting business.
- 1719. — Parents and subsidiaries; alter ego.
- 1720. — Fiduciary shield doctrine.
- 1721. — Licensing relationships.
- 1722. — Successor entities.
- 1723. — Waiver of objections.
- 1724. — Allegations in pleadings.
- 1725. — Determination of jurisdiction.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Jurisdictional discovery.
- 1726. Venue.
- 1727. — In general.
- 1728. — Residence.
- 1729. — Acts of infringement.

VII. PATENT INFRINGEMENT.(Cont'd)

- 1730. — Regular and established place of business.
- 1731. — Multiple defendants.
- 1732. — Waiver of venue objection.
- 1733. Time to sue.
- 1734. — In general.
- 1735. — Limitations.
- 1736. — Laches.
 - (1). In general.
 - (2). Prosecution laches.
 - (3). Of prior owner.
 - (4). Specific period.
 - (5). Effect of prior or pending litigation.
- 1737. Parties.
- 1738. — In general.
- 1739. — Complainants.
- 1740. — Defendants.
- 1741. — Necessary and indispensable parties.
- 1742. — Intervention.
- 1743. — Substitution.
- 1744. — Third-party practice.
- 1745. Process and appearance.
- 1746. — In general.
- 1747. — General appearance.
- 1748. — Nonresident patentee; appointment of agent.
- 1749. — Service on agent of competitor with regular and established place of business.
- 1750. Discovery.
- 1751. — In general.
- 1752. — Discretion of court.
- 1753. — Proceedings to obtain.
- 1754. — Protective orders.
- 1755. — Scope.
 - (1). In general.
 - (2). Initial disclosures.
 - (3). Expert witnesses and testimony.
 - (4). Pretrial disclosures.
 - (5). Infringement or invalidity contentions.
 - (6). Damages.
- 1756. — Failure to respond; sanctions in general.
- 1757. — Supplementation of responses.
- 1758. — Depositions.

291. PATENTS

VII. PATENT INFRINGEMENT.(Cont'd)

- (1). In general.
- (2). Persons whose depositions may be taken.
- (3). Scope of examination.
- (4). Objections.
- (5). Admissibility at trial.
- (6). Failure to appear or testify; sanctions.
- 1759. — Interrogatories.
 - (1). In general.
 - (2). Scope.
 - (3). Opinions, conclusions, and interpretation of patents; contention interrogatories.
 - (4). Failure to answer; sanctions.
- 1760. — Production of documents and things.
 - (1). In general.
 - (2). Particular documents or things.
 - (3). Patent prosecution bar.
 - (4). Work product privilege or immunity.
 - (5). Failure to respond; sanctions.
- 1761. — Entry onto competitor's property.
- 1762. — Requests for admissions.
- 1763. Pretrial conferences and orders.

2. PLEADINGS AND MOTIONS.

- 1771. In general.
- 1772. Complaint or other initial pleading.
- 1773. — In general.
- 1774. — Title and right of complainant.
- 1775. — Marking and notice.
- 1776. — Negating laches.
- 1777. — Negating abandonment.
- 1778. — Description of invention and patentability.
- 1779. — Priority date.
- 1780. — Infringement and injury, loss, or damage.
 - (1). In general.
 - (2). Contributory or induced infringement.
 - (3). Preliminary infringement contentions.
- 1781. — Denial of anticipation and public use or sale.
- 1782. — Estoppel to deny validity.
- 1783. Answer or other responsive pleading.

VII. PATENT INFRINGEMENT.(Cont'd)

- 1784. — In general.
- 1785. — Affirmative defenses.
- 1786. — Fraud or inequitable conduct.
- 1787. — Notice of special matter.
- 1788. — Admissions.
- 1789. Counterclaims.
- 1790. — In general.
- 1791. — Compulsory or permissive.
- 1792. Cross-claims.
- 1793. Amended and supplemental pleadings.
- 1794. Verification of pleadings.
- 1795. Variance between pleadings and proof.
- 1796. Motion to strike pleadings.
- 1797. Motion for more definite statement.
- 1798. Motion for judgment on the pleadings.
- 1799. Motion to dismiss.
- 1800. — In general.
- 1801. — Voluntary dismissal.
- 1802. — Dismissal for failure to prosecute.
- 1803. — Proceedings in general.
- 1804. — Fact questions.

3. EVIDENCE.

- 1811. In general.
- 1812. Presumptions and burden of proof.
- 1813. — In general.
- 1814. — Patentability and validity.
- 1815. — Ownership of patent.
- 1816. — Marking and notice.
- 1817. — License.
- 1818. — Participation, intent, and contributory infringement.
- 1819. — Laches and estoppel.
- 1820. — Profits and damages.
- 1821. Admissibility.
- 1822. — In general.
- 1823. — Profits and damages.
- 1824. Degree of proof.
- 1825. Weight and sufficiency.
- 1826. — In general.
- 1827. — Direct or circumstantial evidence.
- 1828. — Particular matters.
 - (1). In general.
 - (2). Particular fields of invention.
- 1829. — Ownership of patent.
- 1830. — Marking and notice.
- 1831. — License.

291. PATENTS

VII. PATENT INFRINGEMENT.(Cont'd)

- 1832. — Participation, intent, and contributory infringement.
- 1833. — Laches and estoppel.
- 1834. — Profits and damages.

4. TRIAL, HEARING, AND DETERMINATION.

- 1841. In general.
- 1842. Stay of proceeding.
- 1843. Scope of inquiry and power of court in general.
- 1844. Bifurcation or consolidation.
- 1845. Severance of claims.
- 1846. Reception of evidence.
- 1847. Reference.
- 1848. Questions of law or fact.
- 1849. Instructions.
- 1850. Closing arguments.
- 1851. Verdicts; special interrogatories.
- 1852. Findings and decree.
- 1853. Rehearing or reconsideration.

5. RELIEF.

- 1861. In general.
- 1862. Injunctions.
- 1863. — In general.
- 1864. — Grounds in general; multiple factors.
- 1865. — Availability and adequacy of other remedies.
- 1866. — Balance of hardships; irreparable injury.
- 1867. — Public interest considerations.
- 1868. — Defenses or objections.
- 1869. — Evidence.
- 1870. — Hearing and determination.
- 1871. — Scope and extent of relief.
- 1872. — Injunction against patentee.
- 1873. — Modification.
- 1874. Preliminary or temporary injunctions.
- 1875. — In general.
- 1876. — Discretion of court.
- 1877. — Grounds in general; multiple factors.
- 1878. — Establishment of validity and enforceability of patent.
- 1879. — Public acquiescence.
- 1880. — Previous adjudication of validity.
 - (1). In general; necessity.

VII. PATENT INFRINGEMENT.(Cont'd)

- (2). Effect of previous adjudication.
- (3). — In general.
- (4). — Previous adjudication in Court of Appeals or Supreme Court.
- (5). — Previous adjudication in Patent and Trademark Office.
- (6). — Previous adjudication in action against other defendants.
- (7). New evidence or defense establishing invalidity.
- (8). Previous adjudication entered by consent or without contest.
- 1881. — Establishment of infringement.
- 1882. — Actual or threatened infringement.
- 1883. — Availability and adequacy of other remedies.
- 1884. — Balance of hardships; irreparable injury.
- 1885. — Public interest considerations.
- 1886. — Defenses or objections.
 - (1). In general.
 - (2). Laches or acquiescence by patentee.
 - (3). Expiration of patent.
 - (4). Discontinuance of infringement.
- 1887. — Persons who may be restrained.
- 1888. — Application and proceedings.
 - (1). In general.
 - (2). Evidence in general.
 - (3). Presumptions and burden of proof.
 - (4). Weight and sufficiency of evidence.
 - (5). Hearing and determination.
- 1889. — Scope and extent of injunction.
- 1890. — Security instead of injunction.
- 1891. — Security on granting injunction; bonds.
- 1892. — Continuing, modifying, vacating, or dissolving.
- 1893. — Wrongful injunction.
- 1894. Enforcement of injunction.
- 1895. — In general.
- 1896. — Acts constituting violation.
- 1897. — Advice of counsel.
- 1898. — Proceedings in general.
- 1899. — Contempt proceedings.

291. PATENTS

VII. PATENT INFRINGEMENT.(Cont'd)

- 1900. Profits.
- 1901. — In general.
- 1902. — Profits in addition to damages.
- 1903. — Elements, measure, and amount in general.
- 1904. — Reasonable royalty; hypothetical negotiation.
- 1905. — Entire market value.
- 1906. — Commercial value attributable to infringement.
- 1907. — Expenses and other charges against the proceeds.
- 1908. — Improvements.
- 1909. — Process patents.
- 1910. Damages.
- 1911. — In general.
- 1912. — Elements, measure, and amount.
- 1913. — Time limitation.
- 1914. — Reasonable royalty; hypothetical negotiation.
- 1915. — Notice or marking as prerequisite.
- 1916. — Nominal damages.
- 1917. — Provisional rights period.
- 1918. — Enhanced or punitive damages.
- 1919. — Supplemental damages.
- 1920. Interest.
Prejudgment interest, see INTEREST.
- 1921. — In general.
- 1922. — Interest on profits.
- 1923. — Interest on damages.
- 1924. Interlocutory decree.
- 1925. Reference of accounting under decree.

6. JUDGMENT.

- 1931. In general.
- 1932. Summary judgment.
- 1933. — In general.
- 1934. — Presence or absence of fact issues.
- 1935. — Particular cases.
 - (1). In general; products and devices.
 - (2). Methods or processes.
 - (3). Compositions.
 - (4). Patentability and validity.
 - (5). — In general.
 - (6). — Novelty; anticipation.
 - (7). — Public use or sale.

VII. PATENT INFRINGEMENT.(Cont'd)

- (8). — Obviousness; lack of invention.
- 1936. — Affidavits or other evidence.
- 1937. — Hearing and determination.
- 1938. Default judgment.
- 1939. Relief from judgment.
- 1940. — In general.
- 1941. — Judgment as a matter of law.
- 1942. — New trial; amendment.
- 1943. — Setting aside judgment.
- 1944. — Default judgment.

7. APPELLATE REVIEW.

- 1951. In general.
- 1952. Decisions reviewable.
- 1953. — In general.
- 1954. — Mootness.
 - (1). In general.
 - (2). Expiration of patent pending appeal.
- 1955. — Finality.
 - (1). In general.
 - (2). Interlocutory review in general.
 - (3). Collateral and supplementary proceedings and questions.
 - (4). Judgment final except for accounting.
 - (5). Orders relating to injunctions.
- 1956. Presentation and reservation in lower court of grounds of review.
- 1957. — In general.
- 1958. — Plain error.
- 1959. Persons entitled to seek review or assert arguments; parties; standing.
- 1960. Supersedeas or stay of proceedings.
- 1961. — In general.
- 1962. — Bond or security.
- 1963. Record; supplementation and additional proofs.
- 1964. Briefs.
- 1965. Scope, standard, and extent of review.
- 1966. — In general.
- 1967. — De novo review in general.
- 1968. — Discretion of lower court in general.
- 1969. — Questions of fact, verdicts, and findings in general.
- 1970. — Particular matters.

291. PATENTS

VII. PATENT INFRINGEMENT.(Cont'd)

- (1). In general.
 - (2). Patentability and validity.
 - (3). — In general.
 - (4). — Eligible subject matter.
 - (5). — Novelty; anticipation.
 - (6). — Utility.
 - (7). — Obviousness; lack of invention.
 - (8). Persons entitled to patents; inventorship and priority.
 - (9). Patent applications and proceedings.
 - (10). — In general.
 - (11). — Specification and description; enablement.
 - (12). Construction and operation of patents.
 - (13). — In general.
 - (14). — Prosecution history estoppel.
 - (15). Infringement or noninfringement.
 - (16). Inequitable conduct.
 - (17). Relief.
 - (18). — In general.
 - (19). — Profits and damages.
 - (20). Costs and fees.
1971. — Presumptions.
1972. — Harmless and reversible error.
1973. — Subsequent appeals.
1974. Determination and disposition of cause.
1975. — In general.
1976. — Remand; mandate.

8. COSTS AND FEES.

1981. In general.
1982. Results of litigation; prevailing parties.
1983. — In general.
1984. — Effect of amount of recovery.
1985. — Effect of invalid claims and failure to file disclaimer.
1986. — Effect of tender or offer of judgment.
1987. — Effect of dismissal.
1988. Amount, rate, and items.
1989. — In general.
1990. — Depositions and discovery.
1991. — Reference and accounting.

VII. PATENT INFRINGEMENT.(Cont'd)

1992. — Charts, drawings, models, and copies.
1993. — Record; transcripts.
1994. — Other particular items.
1995. Witness fees.
1996. Attorney fees.
1997. — In general.
1998. — Exceptional cases in general.
1999. — Awards to patentees.
2000. — Awards to competitors.
2001. — Amount, rate, and items.
2002. Persons entitled.
2003. Persons liable.
2004. Apportionment.
2005. Proceedings to impose; taxation.
2006. — In general.
2007. — Evidence.
2008. Costs and fees on appeal.
2009. Payment and remedies for collection.

9. OPERATION AND EFFECT OF DECISION.

2011. In general.
2012. Nature of decision.
2013. — In general.
2014. — Finality of determination.
2015. — Judgment by confession or on consent or offer.
2016. — Judgment on discontinuance, dismissal, or nonsuit.
2017. Nature of other proceeding.
2018. Matters concluded.
2019. — In general.
2020. — Identity of cause of action or theory of recovery.
2021. — Identity of subject matter.
2022. — Identity of defenses.
2023. Persons concluded.
2024. Persons who may take advantage of bar.
2025. Rule of comity.
2026. — In general.
2027. — Effect of trial court adjudications.
2028. — Effect of adjudications of Court of Appeals or Supreme Court.
2029. — Effect of adjudications of courts of foreign countries.
2030. — Conflicting previous adjudications.

291. PATENTS

VIII. DESIGN PATENTS.

- 2041. In general.
- 2042. Patentability and validity.
- 2043. — In general.
- 2044. — Eligible subject matter.
- 2045. — Novelty; anticipation.
- 2046. — Utility.
- 2047. — Obviousness; lack of invention.
- 2048. — Other challenges to validity.
- 2049. Persons entitled; inventorship and priority.
- 2050. Applications and proceedings.
- 2051. — In general.
- 2052. — Specification and claims.
- 2053. Construction and operation.
- 2054. Rights and duties; contracts, assignments, and licenses.
- 2055. Infringement.
- 2056. — In general.
- 2057. — Actions and remedies.

IX. PLANT PATENTS.

(A) IN GENERAL.

- 2061. In general.
- 2062. Patentability and validity.
- 2063. — In general.
- 2064. — Eligible subject matter.
- 2065. — Novelty; anticipation.
- 2066. — Utility.
- 2067. — Obviousness; lack of invention.
- 2068. — Other challenges to validity.
- 2069. Persons entitled; inventorship and priority.
- 2070. Applications and proceedings.
- 2071. — In general.
- 2072. — Specification and claims.
- 2073. Construction and operation.
- 2074. Rights and duties; contracts, assignments, and licenses.
- 2075. Infringement.
- 2076. — In general.
- 2077. — Actions and remedies.

(B) PLANT VARIETY PROTECTION.

- 2081. In general.
- 2082. Infringement.
- 2083. — In general.
- 2084. — Actions and remedies.

X. PATENTS ENUMERATED.

- 2091. In general; utility.
- 2092. Design.
- 2093. Plant.
- 2094. Reissue.

294. PAYMENT

SUBJECTS INCLUDED

- Delivery and acceptance of money or its equivalent in discharge of pecuniary obligations in general
- Nature, requisites, sufficiency, and effect of such payment as satisfaction
- Acknowledgment of payment by receipt or other writing
- Presumption of payment and evidence relating thereto
- Application of payments as between particular debts
- Right to recover money paid
- Pleading payment and proof thereof as a defense

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Accord and satisfaction, payment by way of, see ACCORD AND SATISFACTION
- Compromise, payment in performance of, see COMPROMISE AND SETTLEMENT
- Decedents' debts, legacies, etc., payment of, see EXECUTORS AND ADMINISTRATORS
- Limitations statute, payment to prevent bar by, see LIMITATION OF ACTIONS
- Particular classes of obligations, payment of, see LABOR AND EMPLOYMENT, BILLS AND NOTES, BONDS, MORTGAGES AND DEEDS OF TRUST, and other specific topics
- Statute of frauds, effect of payment as a compliance with, see FRAUDS, STATUTE OF
- Taxes, payment of, see TAXATION
- Tender and payment into court, see TENDER

294. PAYMENT

I. REQUISITES AND SUFFICIENCY,

⌘1-35.

II. APPLICATION, ⌘36-47.

III. OPERATION AND EFFECT, ⌘48-53.

IV. PROCEEDINGS TO ESTABLISH PAYMENT, ⌘55-79.

V. RECOVERY OF PAYMENTS, ⌘80-89.

I. REQUISITES AND SUFFICIENCY.

1. Nature and requisites in general.
 - (1). In general.
 - (2). Payment distinguished from other transactions.
2. What law governs.
3. Constitutional and statutory provisions.
4. Persons by whom payment may be made.
5. Persons to whom payment may be made.
6. Place for payment.
7. Time for payment.
8. Mode of making payment.
 - (1). In general.
 - (2). Deposit in bank or with third person.
9. Medium of payment in general.
10. Legal tender.
11. Money not legal tender.
12. Particular kinds of money or currency.
 - (.5). In general.
 - (1). Silver and gold.
 - (2). Fractional currency.
 - (3). Bank paper.
 - (4). Confederate money or securities.
 - (5). Foreign money.
13. Obligations payable in depreciated currency.
14. Operation and effect of scaling laws.
15. Payment by bills or notes.
16. — In general.
 - (1). In general.
 - (2). Surrender of creditor's note.
 - (3). Notes of agents or partners.
17. — Bill, acceptance, or note of debtor.
18. — Bill, acceptance, or note of third person.
19. Orders on third persons for money or goods.
20. Payment by checks.
21. — In general.
22. — Of debtor.
23. — Of third person.

I. REQUISITES AND SUFFICIENCY.(Cont'd)

24. Payment by giving other form of obligation or security.
25. Payment by entry of debits or credits, or by application of deposits or funds.
26. Payment by application of collateral security.
27. Payment by application of money or property wrongfully obtained.
28. Payment in services.
29. Payment by assignment of claims against another.
30. Payment in goods or specific articles.
31. Payment by transfer of real estate.
32. Part payment on account.
33. Conditional payment.
34. Acceptance.
35. Receipt or other acknowledgment.

II. APPLICATION.

36. Rights of parties in general.
37. Statutory provisions.
38. Appropriation by debtor.
 - (.5). In general.
 - (1). Right of debtor in general.
 - (2). What constitutes, and sufficiency of appropriation.
 - (3). Time for appropriation.
 - (4). Effect of appropriation.
39. Appropriation by creditor.
 - (1). In general.
 - (2). Manner of appropriation in general.
 - (3). Illegal and unenforceable demands.
 - (4). Joint debts and debts of other parties.
 - (5). Priority of accrual or maturity of debt.
 - (6). Secured and unsecured debts.
 - (7). What constitutes, and sufficiency of appropriation.
 - (8). Time for appropriation.
 - (9). Effect of application.
40. Application in absence of appropriation by parties.
41. — In general.
 - (1). In general.
 - (2). Manner of application in general.
 - (3). Discharge of liens and mortgages.

294. PAYMENT

II. APPLICATION.(Cont'd)

- (4). Illegal or unenforceable demands.
- 42. — Principal and interest.
- 43. — Items of current account.
- 44. — Priority of creation or accrual of debts.
- 45. — Priority of maturity of debts.
- 46. — Secured and unsecured debts.
 - (1). In general.
 - (2). In items of account.
- 47. Rights of third persons.
 - (1). In general.
 - (2). Rights of subsequent mortgagees or lienors.
 - (3). Rights of wife of debtor.

III. OPERATION AND EFFECT.

- 48. Admission of liability.
- 49. Merger of previous transactions.
- 50. Discharge of debt in general.
- 51. Payment by one or more codebtors.
- 52. Payment by third person.
- 53. Rescission of payment and return of medium received.

IV. PROCEEDINGS TO ESTABLISH PAYMENT.

- 55. Nature of defense in general.
- 56. Statutory provisions.
- 57. Pleading in anticipation of defense.
- 58. Demurrer raising defense.
- 59. Necessity of plea of payment.
- 60. Requisites and sufficiency of plea or answer.
 - (1). In general.
 - (2). Denials.
 - (3). Motion to strike.
 - (4). Affidavit of defense.
- 61. Demurrer or reply to plea or answer.
- 62. Construction and operation of pleadings.
- 63. Issues, proof, and variance.
 - (5). In general.
 - (1). Issues and evidence admissible under pleadings in general.
 - (2). Matters to be proved.
 - (3). Evidence admissible under general issue or general denial.
 - (4). Variance.
- 64. Presumptions.
- 65. — In general.

IV. PROCEEDINGS TO ESTABLISH PAYMENT.(Cont'd)

- 65.1. — As to medium of payment.
- 65.2. — From possession of evidence of debt.
- 65.3. — Receipt or other acknowledgment.
- 65.4. — From remittance by mail.
- 65.10. Burden of proof.
- 65.11. — In general.
- 65.12. — As to application of collateral.
- 65.13. — Contradiction of receipt.
- 66. — Lapse of time.
 - (1). In general.
 - (2). What is sufficient time to raise presumption.
 - (3). Lapse of time in connection with other circumstances.
 - (4). Computation of period.
 - (5). Conclusiveness of presumption and rebuttal thereof.
- 67. — Payment by bills, notes, or checks.
 - (1). In general.
 - (2). Bills, notes, or checks of debtor.
 - (3). Bills, notes, or checks of third person.
 - (4). Conclusiveness of presumption and rebuttal thereof.
- 68. — Application of payments.
- 69. Admissibility of evidence.
- 70. — In general.
 - (1). In general.
 - (2). Relevancy.
 - (3). Financial condition.
 - (4). Habits or usage.
 - (5). Receipts or other acknowledgment.
 - (6). Bills, notes, or checks.
 - (7). Evidence explaining reception of note.
 - (8). Medium of payment.
 - (9). Transfer of property.
- 71. — Application of payments.
- 72. Weight and sufficiency of evidence.
- 73. — In general.
 - (1). In general.
 - (2). Testimony of parties to transaction.
 - (3). Documentary evidence in general.
 - (4). Payment by bills, notes, or checks.
 - (5). Possession of evidence of debt.

295. PENALTIES

IV. PROCEEDINGS TO ESTABLISH PAYMENT.(Cont'd)

- (6). Lapse of time in connection with other circumstances.
- (7). Remittance by mail.
- 74. — Receipts.
 - (1). In general.
 - (2). Receipt in full.
 - (3). For bill or note.
 - (4). Genuineness of receipt.
- 75. — Application of payments.
- 76. Questions for jury.
 - (1). In general.
 - (2). Presumption of payment.
 - (3). Medium of payment.
 - (4). Payment by bills, notes, checks, or orders.
 - (5). Weight and sufficiency of evidence.
 - (6). Application of payments.
- 77. Instructions.
- 78. Verdict and findings.
- 79. Review.

V. RECOVERY OF PAYMENTS.

See also IMPLIED AND CONSTRUCTIVE CONTRACTS §10-25. As distinguished from the topic IMPLIED AND CONSTRUCTIVE CONTRACTS, this subdivision includes recovery of payments on executed contracts where no obligation to pay existed, but by fraud, mistake, duress, or other cause, payment has been made; the topic IMPLIED AND CONSTRUCTIVE CONTRACTS is confined to recovery of payments made on executory contracts, as on failure of payee to perform, or other ground of recovery.

- 80. Nature and grounds of right.
- 81. Statutory provisions.
- 82. Voluntary payments in general.
 - (1). In general.
 - (2). What constitutes voluntary payment.
 - (3). Character of payment in general.
 - (4). Payment on contract.
 - (5). Payment of interest.
 - (6). Payment by way of compromise.
 - (7). Payment of judgment or decree.
 - (8). Payment on execution.
 - (9). Agreement to repay.
- 83. Claim or color of right.
- 84. Mistake of law.
 - (1). In general.

V. RECOVERY OF PAYMENTS.(Cont'd)

- (2). What constitutes, and character of payment.
- (3). Payments under unconstitutional or invalid statutes or ordinances.
- (4). Payment on contract.
- (5). Payment of incumbrances.
- 85. Mistake of fact.
 - (1). In general.
 - (2). What constitutes, and character of payment.
 - (3). Payment on contract.
 - (4). Payment of interest.
 - (5). Payment on account.
 - (6). Payment of incumbrance.
 - (7). Diligence and waiver.
 - (8). Restoration of payee to former status.
- 86. Fraud.
- 87. Duress.
 - (1). In general.
 - (2). What constitutes duress, and character of payment in general.
 - (3). Apprehension or threat of legal proceedings.
 - (4). Duress of person.
 - (5). Duress of goods.
- 88. Protest.
- 89. Actions.
 - (1). In general.
 - (2). Conditions precedent.
 - (3). Parties.
 - (4). Pleading.
 - (5). Evidence.
 - (6). Trial.

295. PENALTIES

SUBJECTS INCLUDED

Moneys recoverable under statutes imposing payment thereof as a punishment for violations of their provisions
Nature and scope of such punishment in general

295. PENALTIES

Constitutional and statutory provisions relating thereto

In what cases and for what offenses penalties are imposed in general

Jurisdiction over and proceedings for recovery of penalties by actions, penal or qui tam, or by indictment or information

Verdicts and judgments and enforcement thereof

Rights of informers and of plaintiffs in qui tam actions

Waiver, compounding, or remission of penalties

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Breaches of contracts in general, penalties for, and distinction between penalties and liquidated damages, see DAMAGES

Fines imposed as punishment by sentences of courts, see FINES

Particular offenses, penalties for, see FOOD, INTOXICATING LIQUORS and other specific topics

Penal bonds, see BONDS

Penal statutes in general, construction of, see CRIMINAL LAW ¶12.7, STATUTES ¶1316

I. NATURE AND GROUNDS, AND EXTENT OF LIABILITY, ¶1-15.

II. ACTIONS AND OTHER PROCEEDINGS, ¶16-41.

I. NATURE AND GROUNDS, AND EXTENT OF LIABILITY.

1. Nature and scope as punishment.
2. Constitutional and statutory provisions.
3. Imposition and grounds in general.
4. Amount and extent.
5. Defenses.
6. Persons entitled to enforce.
7. — In general.
8. — Persons injured or aggrieved.
9. — Informers.
10. Persons liable.
11. Remission.
12. Payment.
13. Disposition of proceeds.
14. — In general.
15. — Rights of informers.

II. ACTIONS AND OTHER PROCEEDINGS.

16. Nature and form of remedy.
17. Statutory provisions.
18. Summary remedies.
19. Conditions precedent.
20. Jurisdiction.
21. Time to sue.
See also LIMITATION OF ACTIONS.
22. Parties plaintiff.
23. — In general.
24. — Qui tam actions and informers.
25. — Control of proceedings.
26. Parties defendant.
27. Process.
28. — In general.
29. — Indorsements and references to statutes.
30. — Service.
31. Abatement on death of party.
32. Pleading.
33. Evidence.
34. Dismissal before trial.
35. Questions for jury.
36. Verdict and findings.
37. New trial.
38. Judgment.
39. Execution and enforcement of judgment.
40. Appeal and error.
41. Costs.

296. PENSIONS

SUBJECTS INCLUDED

Pecuniary allowances paid periodically by government to persons who have rendered services to the public or suffered loss or injury in the public service, or to their representatives

Who are entitled to such allowances and rate and amount thereof

Proceedings to obtain and payment of such pensions

297. PERJURY

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Bounties offered to induce performance of services to the public, see BOUNTIES

Employee pension and benefit plans, see LABOR AND EMPLOYMENT VII

Exemption of pensions from—

Attachment and execution, see EXEMPTIONS

Taxation, see TAXATION

Federal old age and survivors benefits, see SOCIAL SECURITY

Retirement benefits for officers or public employees, see ARMED SERVICES, COUNTIES, EDUCATION, JUDGES, MUNICIPAL CORPORATIONS, PUBLIC EMPLOYMENT, STATES, UNITED STATES, and other topics relating to officers and public employees

1. Constitutional and statutory provisions.
2. Nature of pensions and persons entitled.
3. Rate or amount and arrears.
4. Pension office and proceedings therein in general.
5. Pension agencies and agents.
6. Attorneys or agents, and fees for obtaining pensions.
7. Applications and proceedings thereon.
8. Allowance and certificate.
9. Pledge or other transfer.
10. Payment, checks, and vouchers.
11. Investigations of suspected attempts to defraud.
12. Striking names from rolls, and restoration.
13. Offenses relating to obtaining or payment of pensions or fees therefor.

297. PERJURY

SUBJECTS INCLUDED

Willful violation of the obligation imposed by an oath or affirmation or other lawful substitute for an oath, by giving false testimony or making false declarations or statements

in a judicial proceeding or other proceeding authorized by law

Suborning or procuring or attempting to induce another to commit such acts

Nature and elements of the crimes of perjury, false swearing, subornation of perjury, bribery of witnesses, etc.

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Prosecution for obstruction of justice for giving false testimony, see OBSTRUCTING JUSTICE

Suppression of evidence and intimidation of witnesses, see OBSTRUCTING JUSTICE

I. OFFENSES AND RESPONSIBILITY THEREFOR, ⚡1-16.

II. PROSECUTION, ⚡17-40.

III. SENTENCE AND PUNISHMENT, ⚡41.

I. OFFENSES AND RESPONSIBILITY THEREFOR.

1. Nature and elements of offenses in general.
2. Statutory provisions.
3. Intent.
4. Proceeding in which oath was administered.
5. — In general.
6. — Judicial proceedings.
7. — Administrative proceedings.
8. — Official and other promissory oaths.
9. Jurisdiction or authority of court or tribunal or officer administering oath.
 - (.5). In general.
 - (1). Jurisdiction of court.
 - (2). Officers or persons authorized to administer oaths.
10. Administration, form, and making of oath or substitute therefor.
11. Materiality of testimony or assertion.
 - (.5). In general.
 - (1). Necessity that testimony be material.
 - (2). Materiality in general.

297. PERJURY

I. OFFENSES AND RESPONSIBILITY THEREFOR.(Cont'd)

- (3). Materiality of affidavits and statements therein.
- (4). Oaths in ministerial proceedings.
- (5). Oath as to account or claim sued on.
- (6). Justification of sureties.
- (7). Testimony before grand jury.
- (8). Degree of materiality and sufficiency to establish issues.
- (9). Matters affecting character or credit of witness.
- (10). Incompetency of witness or testimony and waiver thereof.
- (11). Testimony as to statements made elsewhere.
- 12. Falsity of testimony or assertion, and knowledge thereof.
- 13. Subornation of perjury.
- 14. Attempts.
- 15. Defenses.
- 16. Persons liable.

II. PROSECUTION.

- 17. Termination of proceeding in which oath was administered.
- 18. Indictment or information.
- 18.1. — In general.
- 19. — Requisites and sufficiency in general.
 - (.5). In general.
 - (1). Form and requisites in general.
 - (2). Sufficiency in general.
 - (3). Joinder of assignments.
- 20. — Intent.
- 21. — Description of proceeding in which oath was administered.
- 22. — Jurisdiction and authority to administer oath.
- 23. — Administration, form, and making of oath or substitute therefor.
- 24. — Setting forth testimony or affidavit or other writing.
- 25. — Materiality of testimony or assertion.
 - (.5). In general.
 - (1). Mode of pleading materiality in general.

II. PROSECUTION.(Cont'd)

- (2). Necessity of averments of materiality in general.
- (3). Necessity of averring facts to show materiality.
- (4). Necessity of averments of materiality when facts are alleged showing it.
- (5). Sufficiency of averments of materiality in general.
- (6). Sufficiency of statements of facts and issues to show materiality.
- (7). Effect of averments relating to immaterial matters.
- 26. — Assignment of perjury.
 - (.5). In general.
 - (1). Necessity of averring falseness of oath.
 - (2). Necessity of stating particular facts or terms of testimony.
 - (3). Willfulness and knowledge of falsity.
 - (4). Sufficiency of denials in general.
- 27. — Subornation of perjury.
- 28. — Attempts.
- 29. — Issues, proof, and variance.
 - (.5). In general.
 - (1). Issues in general.
 - (2). Matters to be proved.
 - (3). Evidence admissible under pleadings.
 - (4). Variance between allegations and proof.
- 30. Evidence.
- 30.1. — In general.
- 31. — Presumptions and burden of proof.
- 32. — Admissibility.
 - (1). In general.
 - (2). Intent, knowledge, and motive.
 - (3). Description of proceeding in which oath was administered.
 - (4). Jurisdiction and authority to administer oath.
 - (5). Administration, form, and making of oath.
 - (6). Materiality of testimony on which perjury is alleged.
 - (7). Evidence of what accused swore to.

II. PROSECUTION.(Cont'd)

- (8). Truth or falsity of oath or assertion.
- (9). Subornation of perjury and attempts to suborn.
- 33. — Weight and sufficiency in general.
 - (1). In general.
 - (2). Intent and knowledge of falsity.
 - (3). Proceedings in which oath was administered.
 - (4). Jurisdiction and authority to administer oath.
 - (5). Administration, form, and making of oath.
 - (6). Materiality of testimony or assertion.
 - (7). Evidence of what accused swore to.
 - (8). Falsity of oath or assertion.
 - (9). Subornation of perjury.
- 34. — Number of witnesses or corroboration.
 - (1). In general.
 - (2). Necessity of corroboration in general.
 - (3). Elements and evidence requiring corroboration.
 - (4). Sufficiency of corroboration in general.
 - (5). Corroboration by circumstances.
 - (6). Corroboration by admissions of accused.
- 35. Trial.
- 35.1. — In general.
- 36. — Questions for jury.
- 37. — Instructions.
 - (1). In general.
 - (2). Willfulness and knowledge of falsity of testimony.
 - (3). Degree of proof required and effect of evidence in general.
 - (4). Number and corroboration of witnesses.
- 38. — Verdict.

III. SENTENCE AND PUNISHMENT.

- 41. In general.

298. PERPETUITIES

298. PERPETUITIES

SUBJECTS INCLUDED

Estates inalienable beyond the time allowed by law

Restrictions, under either common-law rules or statutes, on creation of future contingent estates, or on suspension of the absolute power of alienation, or on trusts for accumulation

Application of such restrictions to deeds, marriage settlements, trusts, devises and bequests, etc.

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Operation of limitations void for remoteness upon prior or subsequent limitations, see DEEDS, WILLS, and other specific topics

- 1. Nature of rule against remoteness of limitations.
- 2. What law governs.
- 3. Constitutional and statutory provisions.
- 4. Creation of future estates in general.
 - (1). In general.
 - (2). Possibility of violation of rule and effect of defeasibility or limitation.
 - (3). Vesting of estate at death of testator or within permissible period.
 - (4). Reversionary interests and conditions attached to gift or grant.
 - (5). Remainders in general.
 - (6). Limitation after life estate in general.
 - (7). Limitation after life estate to several persons.
 - (8). Remainder with double aspect and cross-remainders.
 - (9). Limitation after successive life estates.
 - (10). Limitation to unborn persons or to heirs or descendants.
 - (11). Limitation on or after minority or definite period of time.
 - (12). Postponement of enjoyment of estate or interest.
 - (13). Executory devises.
 - (14). Limitation on failure of issue.
 - (15). Trust estates.

298. PERPETUITIES

- (15.1). — In general.
- (16). — Duration for minority or definite period of time.
- (17). — Right of survivorship.
- (18). — Effect of power of sale.
- (19). Fidei-commissa and substitutions.
- (20). Powers.
- (21). Dispositions of rents, profits, and income.
- (22). Partial invalidity.
- 5. Suspension of absolute power of alienation.
- 6. — In general.
 - (1). In general.
 - (2). Duration of trusts in general.
 - (3). Gift or limitation to lives in being in general.
 - (4). Trusts to terminate at definite period or at death of beneficiary.
 - (5). Restraint on alienation for definite period of time.
 - (6). Limitation after life estate to several persons.
 - (7). Limitation to unborn persons.
 - (8). Right of survivorship among beneficiaries.
 - (9). Vesting of estate at death of testator or within permissible period.
 - (10). Possibility or probability of violation of rule, and ability of beneficiaries to alienate property.
 - (11). Sufficiency and effect of power of sale.
 - (12). Enjoyment of rents and profits before accrual of absolute interest.
 - (13). Effect of election of widow.
 - (14). Conditions attached to gift.
 - (15). Charge on estate granted.
 - (16). Powers.
 - (17). Mortgages and leases.
 - (18). Gift of annuities or rents, profits, or income.
- 7. — Personal property.
 - (1). In general.
 - (2). Trusts in personal property.
- 8. Remoteness of gifts to charities.
 - (.5). In general.

- (1). Exception to rule against perpetuities in general.
- (2). Gifts on condition.
- (3). Limitations over to charities.
- (4). Gifts to existing corporations or institutions.
- (5). Effect of uncertainty or indefiniteness as to beneficiaries.
- (6). Gifts to projected corporations or institutions.
- (7). Charitable nature of gifts.
- (8). Accumulations for charitable purposes.

9. Accumulations.

- (1). In general.
- (2). What constitutes directions for accumulations.
- (3). Accumulations for definite period of time.
- (4). Accumulations during minorities.
- (5). Accumulations during life or lives.
- (6). Purpose of accumulation.
- (7). Effect of invalid provisions.

300. PILOTS

SUBJECTS INCLUDED

Licensing, registration, certification, and regulation of maritime pilots, for particular ports or places

Employment of pilots by vessels, compulsorily or otherwise

Mutual rights, duties, and liabilities of pilots and owners, charterers, and masters of vessels on which they are employed

Liabilities to pilots of vessels, their cargo, and freight

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Aircraft, pilots of, see AVIATION

Power to regulate commerce, see COMMERCE

- 1. Power to control and regulate.
- 2. Who are pilots.

302. PLEADING

- 2.5. Pilots' associations.
3. Statutory provisions.
4. Pilot commissioners.
5. Licenses.
6. Enjoining unauthorized person from acting as pilot.
7. Obligation to take pilot.
8. Tender of services.
9. Compensation.
10. — In general.
11. — Amount.
12. — Actions.
13. — Lien.
14. Authority and functions.
15. Degree of skill and care required.
16. Liability for negligence.
17. Penalties for violations of regulations.
18. Offenses.

302. PLEADING

SUBJECTS INCLUDED

- Formal statements in writing of causes of actions and defenses in civil actions in general, whether proceeding according to the course of practice at common law or under provisions of practice acts, codes of procedure, etc.
- Nature, requisites, and sufficiency of such statements by the respective parties, and allegations and denials therein
- Affidavits of claim, of merits, and of defense
- Exhibits annexed to pleadings, and copies of accounts mentioned and bills of particulars of matters alleged in pleadings
- Filing and service of pleadings and of papers connected therewith
- Motions and other proceedings relating to pleadings
- Amended and supplemental pleadings
- Joinder of issue, issues, admissibility of evidence under pleadings
- What constitutes variance between allegations and proof, and effect of such variance
- Waiver of objections, and effect of verdict and judgment to cure defects

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Abatement, grounds of and necessity of pleading in abatement, see ABATEMENT AND REVIVAL
- Bankruptcy or insolvency proceedings, pleadings in, see BANKRUPTCY, CREDITORS' REMEDIES ¶1183
- Civil proceedings other than actions, pleading in, see MANDAMUS, QUO WARRANTO, SCIRE FACIAS, and other specific topics
- Criminal prosecutions, pleading in, see INDICTMENT AND INFORMATION, and topics relating to particular crimes
- Dismissal for defects in pleadings, see PRETRIAL PROCEDURE
- Estoppel, pleadings as ground of, see ESTOPPEL
- Pretrial conference, see PRETRIAL PROCEDURE
- Evidence, pleading as, see EVIDENCE
- Federal rules, pleading under, see FEDERAL CIVIL PROCEDURE
- Particular classes of persons, pleading by, see INFANTS, and other specific topics
- Particular causes of action and defenses, pleadings alleging, see specific topics
- Particular forms of action, pleading in, see specific topics
- Parties, joinder and designation in pleading, and objections to pleadings for nonjoinder, misjoinder, misnomer, or other defects as to parties, see PARTIES
- Suits in equity or admiralty, pleading in, see EQUITY, ADMIRALTY
- Summary judgments and arrest of judgment for defects in pleadings, see JUDGMENT
- Wills, pleading in proceedings to probate or contest, see WILLS

- I. FORM AND ALLEGATIONS IN GENERAL, ¶1-38.
- II. DECLARATION, COMPLAINT, PETITION, OR STATEMENT, ¶38.5-75.
- III. RESPONSES OR RESPONSIVE PLEADINGS IN GENERAL, ¶76-161.
 - (A) DEFENSES IN GENERAL, ¶76-100.
 - (B) DILATORY PLEAS AND MATTER IN ABATEMENT, ¶101-111.49.

302. PLEADING

III. RESPONSES OR RESPONSIVE PLEADINGS IN GENERAL—Cont'd

- (C) TRAVERSES OR DENIALS AND ADMISSIONS, ¶112–129.
- (D) MATTER IN AVOIDANCE, ¶130–137.
- (E) SET-OFF, COUNTERCLAIM, AND CROSS-COMPLAINT, ¶138–150.
- (F) AFFIDAVIT OF DEFENSE OR OF MERITS, ¶151–161.
- IV. REPLICATION OR REPLY AND SUBSEQUENT PLEADINGS, ¶162–186.
- V. DEMURRER OR EXCEPTION, ¶187–228.23.
- VI. AMENDED AND SUPPLEMENTAL PLEADINGS AND REPLEADER, ¶229–286.
- VII. SIGNATURE, ¶287–288.
- VIII. VERIFICATION, ¶289–304.
- IX. PROFERT OR OYER, ¶305–306.
- X. EXHIBITS, ¶307–312.
- XI. BILL OF PARTICULARS, ¶313–329.
- XII. COPY OF ACCOUNT, ¶330.
- XIII. FILING AND SERVICE, ¶331–338.
- XIV. WITHDRAWAL, ¶339.
- XV. LOST OR DESTROYED PLEADINGS, ¶340.
- XVI. MOTIONS, ¶341–369.
- XVII. ISSUES, PROOF, AND VARIANCE, ¶370–399.
- XVIII. WAIVER OR CURE OF DEFECTS AND OBJECTIONS, ¶400–431.
- XIX. AIDER BY VERDICT OR JUDGMENT, ¶432–437.

I. FORM AND ALLEGATIONS IN GENERAL.

- 1. Nature and mode of pleading in general.
- 2. Statutory provisions.
- 3. Necessity for written pleadings.
- 4. Entitling pleadings.
- 5. Subject-matter of allegations in general.
- 6. Matters judicially noticed.
- 7. Matters of presumption or implication.
- 8. Matters of fact or conclusions.
 - (1). In general.
 - (2). Nature and subject-matter of allegations in general.
 - (3). Characterization of acts or conduct and stating result thereof in general.
 - (4). Allegations as to consideration.
 - (5). Allegations or denials of indebtedness.

I. FORM AND ALLEGATIONS IN GENERAL.(Cont'd)

- (6). Validity or legality of particular acts, claims, conduct, or instruments.
- (7). Construction and effect of contracts and performance or breach thereof.
- (8). Duties or obligations and performance thereof.
- (9). Allegations as to jurisdiction and legal proceedings.
- (10). Discharge, release, waiver, or abandonment.
- (11). Title, ownership, estate, or possession.
- (12). Rights, claims, or liens, and priority thereof.
- (13). Appointment, authority, and duties of officers and legal representatives.
- (14). Heirship.
- (15). Fraud or misrepresentation.
- (16). Mistake, duress, or undue influence.
- (17). Allegations of negligence.
- (18). Scope of employment.
- (19). Invitation to enter and status as passenger.
- (20). Damage or injury.
- (21). Knowledge or notice.
- (22). Payment or tender.
- 9. Conclusions of law from facts alleged.
- 10. Pleading according to legal effect.
- 11. Matters of evidence.
- 12. Matters peculiarly within knowledge of adverse party.
- 13. Matters not known to party pleading.
- 14. Matters of record.
- 15. Adoption of allegations in other pleadings.
- 16. Sufficiency of allegations in general.
- 17. Directness and positiveness, or argumentativeness.
- 18. Certainty, definiteness, and particularity.
- 19. Ambiguity.
- 20. Disjunctive and alternative allegations.
- 21. Consistency or repugnancy.
- 22. Irrelevancy and redundancy.
- 23. Impertinence and scandal.

302. PLEADING

I. FORM AND ALLEGATIONS IN GENERAL.(Cont'd)

24. Falsity.
25. Language and form of allegations.
26. — In general.
27. — Technical terms.
28. — Videlicet or scilicet.
29. — Abbreviations, numerals, and symbols.
30. — Mistakes in writing, grammar, or spelling.
31. — Erasures and interlineations.
32. Pleading written instruments.
- 32.5. Pleading statutes and statutory actions.
Pleading foreign statutes, see ACTION ¶17.
 - (1). In general.
 - (2). Following language of statute.
 - (3). Special, local, and private acts.
33. Allegations of particular facts and circumstances.
34. Construction in general.
 - (1). In general.
 - (2). General and specific allegations.
 - (3). Presumptions and inferences in aid of pleading.
 - (3.5). Pro se or lay pleadings.
 - (4). Construction against pleader.
 - (5). Particular phrases and allegations.
 - (6). Objections raised at trial or after verdict or judgment.
 - (7). Objections raised on appeal.
35. Surplusage and unnecessary matter.
36. Conclusiveness of allegations or admissions on party pleading.
 - (1). In general.
 - (2). Allegations or admissions in declaration, complaint, or petition.
 - (3). Allegations or admissions in plea, answer, or cross-complaint.
 - (4). Allegations or admissions of reply.
 - (5). Admissions by failure to deny.
 - (6). Persons bound.
 - (7). Pleadings abandoned or withdrawn, or to which demurrer has been sustained.
37. Effect of omission to make allegations.
38. Pleading bad in part.

II. DECLARATION, COMPLAINT, PETITION, OR STATEMENT.

- 38.5. Nature and office.
39. Statutory provisions.
40. Time for filing or service.
41. Form and requisites of declaration in general.
42. Form and requisites of complaint, petition, or statement in general.
Excludes construction of pro se or lay pleadings, see ¶34(3.5) above.
43. Title or caption.
44. Designation of court and term.
45. Venue or designation of place of trial.
46. Names, description, and capacity of parties.
47. Recital of or reference to process.
48. Statement of cause of action in general.
49. Theory and form of action.
50. Separate causes of action.
51. — In general.
52. — Separate statement and numbering.
 - (1). In general.
 - (2). Particular causes of action.
53. Separate counts on same cause of action.
 - (1). In general.
 - (2). Particular causes of action.
54. Reference from one count or paragraph to another.
55. Right of plaintiff.
56. — In general.
57. — Coplaintiffs.
58. Matter of inducement.
59. Performance of conditions.
60. Act or omission of defendant.
61. — In general.
62. — Codefendants.
64. Duplicity.
 - (1). In general.
 - (2). Particular causes or grounds of action.
65. Excusing nonjoinder of parties.
66. Excusing failure to make averments.
67. Anticipating defenses.
68. Allegations on knowledge, or on information and belief.
69. Admissions.
70. Formal conclusion.
71. Damages.
72. Prayer for relief.

302. PLEADING

II. DECLARATION, COMPLAINT, PETITION, OR STATEMENT.(Cont'd)

- 73. Indorsements.
- 74. Conformity to process, and variance.
- 75. Affidavit of claim or cause of action.

III. RESPONSES OR RESPONSIVE PLEADINGS IN GENERAL.

(A) DEFENSES IN GENERAL.

- 76. Nature and scope of defense.
- 77. Statutory provisions.
- 78. Necessity for defense.
- 79. Matter constituting defense in general.
- 80. Partial defenses.
- 81. Matters arising after commencement of suit and before plea or answer.
- 82. Right to defend, and leave of court.
- 83. Rule to plead.
- 84. Joint or separate pleas or answers of co-defendants.
- 85. Time to plead in general.
 - (1). In general.
 - (2). Discretion of court.
 - (3). After default or expiration of time.
 - (4). Extension or shortening of time.
 - (5). Computation of time.
- 86. Imparance.
- 87. Mode of pleading defenses in general.
- 88. Plea or answer to part of cause of action or pleading of plaintiff.
- 89. Pleading different pleas or defenses together.
- 90. — In general.
- 92. — Joinder of set-off or counterclaim with other defense.
- 93. — Inconsistent defenses.
 - (1). In general.
 - (2). Particular defense in general.
 - (3). General issue or denial and other defenses.
 - (4). Payment or limitations and other defenses.
- 94. — Separate statement of defenses.
- 95. — Reference from one plea or paragraph to another.
- 96. Statement of defense.
- 97. Formal commencement and conclusion of pleas.
- 98. Responsiveness of plea or answer.

III. RESPONSES OR RESPONSIVE PLEADINGS IN GENERAL.(Cont'd)

- 99. Duplicity in plea or answer.
 - 100. Tender of issue by plea or answer, and joinder in issue thereon.
- #### (B) DILATORY PLEAS AND MATTER IN ABATEMENT.
- 101. Nature and office of dilatory pleas.
 - 102. Statutory provisions.
 - 104. Plea to the jurisdiction.
 - (1). In general.
 - (2). Nonresidence of defendant and venue of action.
 - 105. Plea in suspension.
 - 106. Plea in abatement.
 - (1). In general.
 - (2). Plea of other action pending.
 - 107. Answer pleading matter in abatement.
 - 108. Pleading in abatement matter in bar.
 - 109. Pleading in bar matter in abatement.
 - 110. Operation and effect of plea or answer and waiver or abandonment thereof.
 - 111. Decision of issue, and proceedings thereon.
 - 111.1. — In general; controverting plea or affidavit, necessity of.
 - 111.2. — Time for filing controverting plea or affidavit and extension thereof.
 - 111.3. — Requisites, sufficiency and effect of controverting plea or affidavit in general.
 - 111.4. — Making petition, complaint or declaration a part of controverting plea or affidavit.
 - 111.5. — Verification of controverting plea or affidavit.
 - 111.6. — Amendment of controverting plea or affidavit.
 - 111.7. — Service of controverting plea or affidavit.
 - 111.8. — Issues, nature and requisites of.
 - 111.9. — Matters to be proved in general.
 - 111.10. — Admissions.
 - 111.11. — Surplusage and immaterial matters.
 - 111.12. — Matters to be proved in specific suits in general.
 - 111.13. — Breach of warranty of title to land, suits for.

302. PLEADING

III. RESPONSES OR RESPONSIVE PLEADINGS IN GENERAL.(Cont'd)

- 111.14. — Carriers, suits against.
- 111.15. — Contract in writing, suit involving.
- 111.16. — Corporations and associations, suits against.
- 111.17. — Crime or trespass, suit based on.
- 111.18. — Defendants in different counties, suits against.
- 111.19. — Foreign corporations, suits against.
- 111.20. — Fraternal benefit societies and statewide mutual assessment companies, suits against.
- 111.21. — Fraud, suits involving.
- 111.22. — Insurance companies, suits against.
- 111.23. — Lands, suits for recovery of, or damages thereto, or to remove incumbrances, quiet title, prevent or stay waste.
- 111.24. — Libel or slander, suits for.
- 111.25. — Married women, suits against.
- 111.26. — Mortgage or other liens, suits for foreclosure of.
- 111.27. — Partition, suits for.
- 111.28. — Railroad corporations, suits against for personal injuries or death.
- 111.29. — Multiple or alternative grounds; suits involving in general.
- 111.30. — Necessary parties where two or more defendants.
- 111.31. — Variance in general.
- 111.32. — Failure of proof.
- 111.33. — Right to separate trial on pleas before trial on merits.
- 111.34. — Time for trial.
- 111.35. — Trial in general.
- 111.36. — Scope of inquiry and matters considered in general.
- 111.37. — Merits.
- 111.38. — Petition, complaint, declaration or other pleadings.
- 111.39. — Presumptions and burden of proof.
 - (.5). In general.
 - (1). Abatement in general.

III. RESPONSES OR RESPONSIVE PLEADINGS IN GENERAL.(Cont'd)

- (2). Venue and privilege in general.
- (3). Cause of action.
- (4). Exceptions in Texas venue statute.
 - (4.1). — In general.
- (5). — Contract in writing.
- (6). — Crime or trespass, negligence.
- (7). — Defendants in different counties.
- (8). — Fraud.
- 111.40. — Admissibility in evidence in general.
- 111.41. — Pleadings.
- 111.42. — Weight and sufficiency of evidence.
 - (1). In general.
 - (2). Degree of proof in general; prima facie evidence or case.
 - (3). Residence of defendants.
 - (4). Exceptions in Texas venue statute.
 - (4.1). — In general.
 - (5). — Contract in writing.
 - (6). — Corporations and associations; foreign corporations.
 - (7). — Crime, trespass, or negligence in general.
 - (8). — Automobile accident cases, crime, trespass, or negligence.
 - (9). — Defendants in different counties.
 - (10). — Fraud.
 - (11). — Lands.
- 111.43. — Questions of law and fact.
- 111.44. — Verdict and findings.
- 111.45. — Time within which decision must be rendered.
- 111.46. — Determination.
- 111.47. — Order or judgment.
- 111.48. — Amendments following sustaining of pleas.
- 111.49. — Vacation or modification of order or judgment.
- (C) TRAVERSES OR DENIALS AND ADMISSIONS.**
 - 112. Nature and office of traverse or denial.
 - 113. Statutory provisions.
 - 114. Sufficiency of traverse in general.
 - 115. General issue.

302. PLEADING

III. RESPONSES OR RESPONSIVE PLEADINGS IN GENERAL.(Cont'd)

- 116. General issue with notice or leave as to special matter.
- 117. Common or specific traverse.
- 118. Special traverse.
- 119. Sufficiency of denials under codes of procedure.
- 119.1. — In general.
- 120. — Form and requisites in general.
 - (1). In general.
 - (2). Denial of allegations not specifically admitted or qualified.
- 121. — Denial of knowledge or information.
 - (1). In general.
 - (2). Particular matters.
 - (3). Matters necessarily or presumptively within knowledge of defendant.
 - (4). Matters of record.
- 122. — Denial on information and belief.
- 123. General issue or general denial under codes of procedure.
- 124. Specific denials under codes of procedure.
- 125. Traverse or denial of conclusions or immaterial allegations.
- 126. Negative pregnant.
- 127. Admissions in general.
 - (1). In general.
 - (2). Construction, operation, and effect in general.
- 128. Protestation.
- 129. Admissions by failure to traverse or deny.
 - (1). In general.
 - (2). Subject-matter of allegations not denied in general.
 - (3). Immaterial or unnecessary allegations.
 - (4). Matters of fact or conclusions.
 - (5). Pleading written instruments.

(D) MATTER IN AVOIDANCE.

- 130. Nature and office of pleading in confession and avoidance.
- 131. Form and requisites of plea in general.
- 132. Statement of new matter constituting defense under codes of procedure.

III. RESPONSES OR RESPONSIVE PLEADINGS IN GENERAL.(Cont'd)

- 133. Giving color.
 - 134. Matter in justification or excuse.
 - 135. Matter in discharge.
 - 136. Matter available under general issue or general denial.
 - 137. Matter available under other special plea.
- (E) SET-OFF, COUNTERCLAIM, AND CROSS-COMPLAINT.**
- 138. Nature and office of pleading.
 - 139. Necessity for plea or answer.
 - 140. Time for pleading.
 - 141. Notice.
 - 142. Form and requisites of plea or answer in general.
 - 143. Matter of recoupment or reconvention.
 - 144. Matter of set-off in general.
 - 145. Set-off or counterclaim in affidavit of defense.
 - 146. Counterclaim in answer.
 - 147. Cross-complaint in general.
 - 148. Cross-complaint against plaintiff.
 - 149. Cross-complaint against codefendant or third parties.
 - 150. Answer to cross-complaint.

(F) AFFIDAVIT OF DEFENSE OR OF MERITS.

- 151. Nature and office.
- 152. Necessity in general.
- 153. Persons who may make.
- 154. Time for making and filing.
- 155. Form and requisites in general.
- 156. Averments as to facts constituting defense.
- 157. Averments of facts or conclusions.
- 158. Averments as to merits.
- 159. Averments as to advice of counsel.
- 160. Construction, operation, and effect.
- 161. Failure to make or file.

IV. REPLICATION OR REPLY AND SUBSEQUENT PLEADINGS.

- 162. Nature and office of replication or reply.
- 163. Statutory provisions.
- 164. Necessity for pleading in reply.
- 165. — In general.
- 166. — New matter in answer.

302. PLEADING

IV. REPLICATION OR REPLY AND SUBSEQUENT PLEADINGS.(Cont'd)

- 167. — Set-off or counterclaim in answer.
- 168. — Cross-complaint.
- 169. Matter to be pleaded in reply in general.
- 170. Matters arising after commencement of suit and before replication or reply.
- 171. Right to plead in reply and leave of court.
- 172. Time for filing or service.
- 173. Form and requisites of replication in general.
- 174. Form and requisites of reply under codes of procedure.
- 175. New assignment of cause of action.
- 176. Traverses or denials.
- 177. Admissions.
- 178. Confession and avoidance.
- 179. Replication de injuria.
- 180. Departure from declaration or complaint.
 - (1). In general.
 - (2). Actions ex contractu.
 - (3). Actions ex delicto.
 - (4). Actions to quiet title.
 - (5). Injunction or mandamus.
- 181. Unnecessary reply.
- 182. Failure to reply.
- 183. Rejoinder.
- 184. Surrejoinder.
- 185. Rebutter.
- 186. Tender of issue, and joinder in issue.

V. DEMURRER OR EXCEPTION.

- 187. Mode of objecting; preliminary objections.
- 188. Plea, answer, or reply, with demurrer.
- 189. Nature and office of demurrer, and pleadings demurrable.
- 190. Statutory provisions.
- 191. Necessity for demurrer.
- 192. Grounds for demurrer in general.
 - (1). In general.
 - (2). Uncertainty, indefiniteness, or lack of particularity.
 - (3). Pleading conclusions.
 - (4). Alternative, argumentative, or hypothetical allegations.
 - (5). Surplusage and irrelevant, immaterial, or redundant matter.

V. DEMURRER OR EXCEPTION.(Cont'd)

- (6). Matter not appearing on face of pleading.
- 193. Grounds for demurrer to declaration, complaint, petition, or statement.
 - (1). In general.
 - (2). Improper form of action and existence of other remedy.
 - (3). Want of jurisdiction.
 - (4). Premature commencement of action and laches.
 - (5). Insufficiency of facts to constitute cause of action.
 - (6). Misjoinder of causes of action, duplicity, or failure to separately state and number.
 - (7). Want of or defective prayer.
 - (8). Demand for excessive or unauthorized relief or damages.
 - (9). Failure to attach or file written instruments or exhibits and questions relating thereto.
- 194. Grounds for demurrer to plea or answer, or to defense therein.
 - (1). In general.
 - (2). Pleas in abatement.
 - (3). Inconsistent defenses and matter constituting partial defense.
 - (4). Pleading matter admissible under other pleas.
 - (5). Denials.
- 195. Grounds for demurrer to set-off, counterclaim, or cross-complaint.
- 196. Grounds for demurrer to replication or reply or to subsequent pleadings.
- 197. Right to demur, and leave of court.
- 198. Joint or separate demurrers.
- 199. Time for filing or serving demurrer.
- 200. Form and requisites of demurrer in general.
- 201. Form and requisites of demurrer under codes of procedure.
- 202. Demurrer incorporated in answer.
- 203. Scope and extent of demurrer in general.
- 204. Demurrer to part of pleading or to pleading good in part.
 - (1). In general.
 - (2). Demurrer to declaration, complaint, or petition in general.

302. PLEADING

V. DEMURRER OR EXCEPTION.(Cont'd)

- (3). Pleading setting up several theories, or causes of action, or grounds of recovery.
- (4). Pleading good as to some of the parties.
- (5). Demurrer to plea, answer, or cross-complaint.
- (6). Demurrer to reply.
- (7). Demurrer to part of pleading.
- 205. General demurrer.
 - (1). In general.
 - (2). Objections reached in general.
 - (3). Technical or formal defects.
 - (4). Misjoinder of causes of action and duplicity.
 - (5). Uncertainty, indefiniteness, or redundancy.
 - (6). Ambiguity, argumentativeness, or alternative allegations.
- 206. Special demurrer.
- 206.1. — In general.
- 207. — Nature and necessity.
- 208. — Specification of grounds.
- 209. — Scope and extent.
- 210. Speaking demurrer.
- 211. Demurrer ore tenus.
- 212. Abandonment or waiver of demurrer.
- 213. Operation and effect of demurrer in general.
- 214. Admissions by demurrer.
 - (1). In general.
 - (2). Facts well pleaded.
 - (3). Specific matters admitted in general.
 - (4). Inferences and conclusions of fact.
 - (5). Conclusions of law and construction of written instruments.
 - (6). Admissions as to statutes or as to foreign laws.
 - (7). Fraud.
 - (8). Purpose, scope, and effect of admissions.
- 215. Joinder in issue on demurrer.
- 216. Scope of inquiry and matters considered on demurrer in general.
 - (1). In general.
 - (2). Process, pleadings, and other documents.

V. DEMURRER OR EXCEPTION.(Cont'd)

- (3). Objections not specified as grounds for demurrer.
- 217. Effect of demurrer as opening record.
 - (1). In general.
 - (2). Demurrer to plea, answer, or cross-petition.
 - (3). Demurrer to replication or reply or subsequent pleadings.
- 218. Hearing and determination on demurrer.
 - (1). In general.
 - (2). Time, place, and notice.
 - (3). Findings, decision, order, or judgment.
 - (4). Dismissal or nonsuit.
 - (5). Reconsideration of decision.
- 219. Operation and effect of decision on demurrer.
- 220. — In general.
- 221. — Overruling demurrer.
- 222. — Pleading over after demurrer overruled.
- 223. — Sustaining demurrer.
- 224. — Sustaining demurrer to part of pleading.
- 225. — Amendment or further pleading after demurrer sustained.
 - (1). In general.
 - (2). Authority and discretion of court.
 - (3). Time to amend.
- 226. — Effect on subsequent pleading.
- 227. Failure to demur.
- 228. Exceptions to pleadings in general.
- 228.1. Constitutional and statutory provisions.
- 228.2. Nature and office of exceptions and pleadings subject thereto.
- 228.3. Exceptions available to different persons.
- 228.4. Estoppel to except.
- 228.5. Joint or separate exceptions.
- 228.6. Dilatory exceptions.
- 228.7. Dilatory exception of vagueness.
- 228.8. Peremptory exceptions.
- 228.9. — In general; relating to forms.
- 228.10. — Founded on law in general.
- 228.11. — No cause of action.
- 228.12. — No right of action.
- 228.13. General exceptions.
- 228.14. Special exceptions.

302. PLEADING

V. DEMURRER OR EXCEPTION.(Cont'd)

- 228.15. Time to plead and waiver.
- 228.16. Hearing and matters considered.
- 228.17. — In general.
- 228.18. — Exhibits and other documents, including pleadings other than one excepted to.
- 228.19. — Admissions in general.
- 228.20. — Facts.
- 228.21. — Conclusions.
- 228.22. — Specific allegations.
- 228.23. Determination and operation and effect thereof.

VI. AMENDED AND SUPPLEMENTAL PLEADINGS AND REPLEADER.

- 229. Right to amend pleadings in general.
- 230. Statutory provisions.
- 231. Amendment as of course.
- 232. Amendment on court's own motion.
- 233. Leave of court to amend.
- 233.1. — In general.
- 234. — Necessity.
- 235. — Authority of court in general.
- 236. — Discretion of court.
 - (1). In general.
 - (2). Affected by time of application in general.
 - (3). During trial.
 - (4). After evidence introduced, submission of case, or rendition of judgment.
 - (5). Amendment to conform to proofs.
 - (6). Subject-matter of amendment in general.
 - (7). New or different cause of action or defense.
- 237. — Amendment to conform to proofs.
 - (1). In general.
 - (2). Necessity for amendment.
 - (3). Condition of cause and time for amendment in general.
 - (4). Amendment after verdict or judgment.
 - (5). Objection to evidence and failure to object.
 - (6). Variances amendable in general.
 - (7). Place, time, or amount.
 - (8). New or different cause of action or defense.

VI. AMENDED AND SUPPLEMENTAL PLEADINGS AND REPLEADER.(Cont'd)

- 238. — Application for leave, and determination thereon in general.
 - (1). In general.
 - (2). Notice of application and presentation and service of amendment.
 - (3). Affidavits and other proofs.
 - (4). Hearing, determination, and order.
 - (5). Compliance or failure to comply with order or leave.
- 239. — Conditions on granting leave.
 - (5). In general.
 - (1). Discretion of court.
 - (2). Conditions and terms in general.
 - (3). Costs, fees, and expenses.
- 240. Mode of making amendment.
- 241. Form and sufficiency of amended pleading in general.
- 242. Amendment of declaration, complaint, petition, or statement.
- 242.1. — In general.
- 243. — Defects amendable in general.
- 244. — Necessity for amendment.
- 245. — Condition of cause and time for amendment.
 - (1). In general.
 - (2). Laches.
 - (3). During trial in general.
 - (4). After evidence introduced or submission of case.
 - (5). After reference or on inquest of damages.
 - (6). After verdict.
 - (7). After judgment or motion therefor.
- 246. — Subject-matter and grounds in general.
 - (1). In general.
 - (2). Actions ex contractu.
 - (3). Actions ex delicto.
- 247. — Matters arising or discovered after original pleading.
- 248. — New or different cause of action.
 - (1). In general.
 - (2). What constitutes new cause in general.
 - (3). Actions ex contractu in general.

302. PLEADING

VI. AMENDED AND SUPPLEMENTAL PLEADINGS AND REPLEADER.(Cont'd)

- (4). Actions on contract or for breach thereof.
- (5). Actions on insurance policies or for assessments.
- (6). Actions for price or for breach of warranty.
- (7). Actions on account or for an accounting.
- (8). Actions for deposits.
- (9). Actions ex delicto in general.
- (10). Actions based on negligence in general.
- (11). Actions for personal injuries in general.
- (12). Actions for injuries to employees.
- (13). Actions based on fraud or misrepresentation.
- (14). Actions for damages from fire.
- (15). Actions for penalties.
- (16). Equitable suits or proceedings in general.
- (17). Miscellaneous actions or proceedings.
- 249. — Change of form of action.
 - (1). In general.
 - (2). Changing from contract to tort and vice versa.
 - (3). Equitable and legal actions.
 - (4). Particular forms of action.
- 250. — As to relief prayed.
- 251. — Sufficiency of amendment.
- 252. — Operation and effect in general.
 - (1). In general.
 - (2). Abandonment or supersedure of prior pleading.
- 253. — Plea or answer to amended pleading.
- 254. — Demurrer to amended pleading.
- 255. Amendment of plea or answer.
 - 255.1. — In general.
- 256. — Defects amendable in general.
- 257. — Necessity for amendment.
- 258. — Condition of cause and time for amendment.
 - (1). In general.
 - (2). Laches.
 - (3). During trial in general.

VI. AMENDED AND SUPPLEMENTAL PLEADINGS AND REPLEADER.(Cont'd)

- (4). After evidence introduced or submission of case.
- (5). After verdict or judgment or motion therefor.
- 259. — Subject-matter and grounds in general.
- 260. — Matters arising or discovered after original pleading.
- 261. — New or different defense.
- 262. — New set-off or counterclaim.
- 263. — Sufficiency of amendment.
- 264. — Operation and effect in general.
- 265. — Replication or reply to amended pleading.
- 266. — Demurrer to amended pleading.
- 267. Amendment of cross-complaint.
- 268. Amendment of affidavit of defense, or of merits.
- 269. Amendment of replication or reply and of subsequent pleadings.
- 270. Amendment of demurrer.
- 271. Amendment as to signature or verification.
- 272. Plea puis darrein continuance.
- 273. Supplemental pleading.
 - 273.1. — In general.
- 274. — Nature and office.
- 275. — Right to plead in general.
- 276. — Leave of court.
- 277. — Necessity, subject-matter, and grounds in general.
- 278. — Mode and form in general.
- 279. — Supplemental complaint, petition, or statement.
 - (1). In general.
 - (2). Condition of cause and time for amendment.
 - (3). Subject-matter.
 - (4). New or different cause of action or relief.
- 280. — Supplemental answer.
- 281. — Supplemental affidavit of defense.
- 282. — Supplemental reply.
- 283. — Answer or reply to supplemental pleading.
- 284. — Demurrer or exception to supplemental pleading.

302. PLEADING

VI. AMENDED AND SUPPLEMENTAL PLEADINGS AND REPLEADER.(Cont'd)

- 285. Further, additional, or substituted pleading.
- 286. Repleader.

VII. SIGNATURE.

- 287. Signature of party.
- 288. Signature and certificate of counsel.

VIII. VERIFICATION.

- 289. Necessity for verification and effect of omission.
- 290. — In general.
 - (1). In general.
 - (2). Declaration, complaint, or petition.
 - (3). Plea, answer, or reply.
 - (4). Bill of particulars.
 - (5). Amended or altered pleading and plea puis darrein continuance.
- 291. — Actions or pleadings based on written instruments.
 - (1). In general.
 - (2). Genuineness, execution, or signature.
 - (3). Policy or certificate of insurance.
 - (4). Deeds or mortgages.
- 292. — Actions on accounts.
- 293. — Dilatory defenses and matter in abatement.
- 294. — Pleadings subsequent to verified pleading.
- 295. Persons who may verify pleading.
- 296. — In general.
- 297. — Complaintiffs or codefendants.
- 298. — Agents or attorneys.
- 299. Time for verification.
- 300. Sufficiency of verification.
- 301. — In general.
 - (1). In general.
 - (2). Persons before whom verification may be made.
 - (3). Knowledge, information, and belief.
- 302. — By agent or attorney.
- 303. Amendment of verification.
- 304. Operation and effect of verification.

IX. PROFERT OR OYER.

- 305. Profert.
- 306. Oyer.

X. EXHIBITS.

- 307. Exhibits annexed to pleading.
- 308. Written instruments or copies thereof filed with pleading.
- 309. Production and inspection of written instrument referred to in pleading.
- 310. Construction, operation, and effect in general.
- 311. Necessity and effect of reference in pleading to exhibits annexed or filed.
- 312. Variance between pleading and instrument annexed, filed, or referred to.

XI. BILL OF PARTICULARS.

- 313. Nature and office of bill of particulars.
- 314. Causes in which particulars may be required.
- 315. Right to particulars in general.
- 316. Authority and discretion of court.
- 317. Particulars of cause of action.
 - (1). In general.
 - (2). Actions ex delicto in general.
 - (3). Actions for personal injuries.
 - (4). Actions based on fraud or fraudulent representations.
 - (5). Actions ex contractu.
 - (6). Actions on account stated or for an accounting.
- 318. Particulars of defense in general.
 - (1). In general.
 - (2). Actions ex contractu.
 - (3). Actions ex delicto.
- 319. Particulars of set-off or counterclaim.
- 320. Knowledge of parties as to subject-matter.
- 321. Ability to furnish particulars.
- 322. Demand for bill.
- 323. Application for bill, and proceedings thereon.
 - (1). In general.
 - (2). Time for application and notice thereof.
 - (3). Affidavits and other proofs.
 - (4). Determination and order.
- 324. Form and requisites of bill.
- 325. Amendment of bill.

302. PLEADING

XI. BILL OF PARTICULARS.(Cont'd)

- 326. Further or additional bill.
- 327. Construction and operation of bill in general.
- 328. Variance between pleading and bill.
- 329. Failure to furnish particulars.

XII. COPY OF ACCOUNT.

- 330. Copy of account alleged in pleading.

XIII. FILING AND SERVICE.

- 331. Purpose of filing or service in general.
- 332. Necessity for filing or service.
- 333. Time for filing or service.
- 334. Demand or notice or other proceedings to compel filing or service.
- 335. Requisites and sufficiency of filing.
- 336. Sufficiency of service and proof thereof.
- 337. Operation and effect of filing or service.
- 338. Acceptance and return of pleadings.

XIV. WITHDRAWAL.

- 339. In general.

XV. LOST OR DESTROYED PLEADINGS.

- 340. In general.

XVI. MOTIONS.

- 341. Scope and purposes of remedy by motion in general.
- 342. Judgment on pleadings.
- 343. — In general.
- 344. — Authority and discretion of court.
- 345. — Insufficient cause of action or defense.
 - (1). In general.
 - (1.1). Affidavit of defense.
 - (1.2). Affidavit of defense raising questions of law.
 - (1.3). Answer.
 - (1.4). Complaint, declaration, petition or statement of claim.
 - (1.5). Counterclaim.
 - (1.6). Reply and reply raising questions of law.
- (2). Judgment on denial of allegations.
- 346. — Frivolous pleading.
- 347. — Defective pleading.

XVI. MOTIONS.(Cont'd)

- 348. — Want of or insufficient affidavit of defense or of merits.
- 349. — Admissions in pleading.
- 350. — Application and proceedings thereon.
 - (1). In general.
 - (2). Time for proceedings.
 - (3). Hearing, determination, and relief.
 - (3.1). — In general.
 - (4). — Admissions by motion in general.
 - (5). — Well pleaded facts, admission of.
 - (6). — Matters not admitted.
 - (7). — Scope of inquiry; questions to be determined.
 - (8). — Matters considered.
 - (9). — Order or judgment.
 - (10). — Operation and effect of decision; amendment or pleading over.
- 351. Striking out pleading or defense.
Dismissal for defects in pleadings, see PRETRIAL PROCEDURE.
- 352. — In general.
- 353. — Authority and discretion of court.
- 354. — Insufficient allegations or denials.
- 355. — Defective or irregular pleading.
- 356. — Amended or supplemental pleading.
- 357. — Bill of particulars.
- 358. — Frivolous pleading.
- 359. — Sham answer or defense.
- 360. — Application and proceedings thereon.
- 361. Striking out matter from pleading.
- 362. — In general.
 - (1). In general.
 - (2). Grounds for striking out matter in general.
 - (3). Sham, frivolous, or immaterial allegations.
 - (4). Inconsistent allegations and allegations changing issues.
 - (5). Amended pleading.
- 363. — Authority and discretion of court.
- 364. — Irrelevant, redundant, or scandalous matter.

302. PLEADING

XVI. MOTIONS.(Cont'd)

- (1). In general.
- (2). Irrelevant matter.
- (3). Redundant matter.
- (4). Scandalous and impertinent matter.
- (5). Matters of evidence and conclusions.
- (6). Surplusage and unnecessary matter.
- 365. — Application and proceedings thereon.
 - (1). In general.
 - (2). Nature, form, and requisites of proceeding.
 - (3). Hearing, determination, and order.
- 366. — Operation and effect.
- 367. Making more definite and certain.
 - (1). In general.
 - (2). Declaration, complaint, or petition in general.
 - (3). Actions ex contractu.
 - (4). Actions ex delicto.
 - (5). Plea or answer or subsequent pleadings.
 - (6). Application and proceedings thereon.
- 368. Separating and numbering causes of action or defenses.
- 369. Election.
 - (5). In general.
 - (1). Causes of action in general.
 - (2). Actions ex contractu.
 - (3). Actions ex delicto.
 - (4). Defenses in general.
 - (5). Demurrer and answer.
 - (6). Application and proceedings thereon.

XVII. ISSUES, PROOF, AND VARIANCE.

- 370. Nature and requisites of issue.
- 371. Materiality of issues.
- 372. Scope of issues of fact.
- 373. Matters to be proved.
- 373.1. — In general.
- 374. — Allegations in general.
- 375. — Surplusage and unnecessary allegations.
- 376. — Admissions in general.

XVII. ISSUES, PROOF, AND VARIANCE.(Cont'd)

- 377. — Admissions by failure to deny.
- 378. — Denials.
- 379. Evidence admissible under pleadings.
- 379.1. — In general.
- 380. — Conformity to pleadings in general.
- 381. — Scope and sufficiency of allegations.
 - (1). In general.
 - (2). Declaration, complaint, or petition.
 - (3). Plea or answer, or subsequent pleadings.
- 382. — General issue or general denial.
 - (1). In general.
 - (2). Title, ownership, or possession.
 - (3). Set-off, counterclaim, or cross-complaint.
- 383. — General issue, with notice or leave as to special matter.
- 384. — Set-off or counterclaim.
- 385. — Bill of particulars.
- 386. Variance between allegations and proof.
- 386.1. — In general.
- 387. — Nature and effect in general.
- 388. — Materiality to issue.
- 389. — Extent of variance in general.
- 390. — Place.
- 391. — Time.
- 392. — Parties or other persons.
- 393. — Property or other subject-matter.
- 394. — Written instruments.
- 395. — Elements or incidents of cause of action.
- 396. — Matters of defense.
- 397. — Nature or extent of relief.
- 398. — Effect of variance to mislead or surprise.
- 399. — Failure of proof.

XVIII. WAIVER OR CURE OF DEFECTS AND OBJECTIONS.

- 400. Defects and objections which may be cured or waived.
- 401. Cure by subsequent pleading.
- 402. — In general.
- 403. — Pleading of adverse party.
 - (1). In general.

302. PLEADING

XVIII. WAIVER OR CURE OF DEFECTS AND OBJECTIONS.(Cont'd)

- (2). Defects in declaration, petition, or complaint in general.
- (3). Actions ex contractu.
- (4). Actions ex delicto.
- (5). Equitable suits and proceedings.
- 404. Waiver of objections to pleadings in general.
- 405. Waiver of objections to declaration, complaint, petition, or statement, or want thereof.
- 406. — In general.
 - (1). In general.
 - (2). Want of declaration.
 - (3). Pleading over and trial on merits in general.
 - (4). Effect of stipulation.
 - (5). Nature of defect or objection and sufficiency of allegations in general.
 - (6). Theory and form of action.
 - (7). Ambiguity, uncertainty, indefiniteness, or lack of particularity.
 - (8). Misjoinder of causes, duplicity, or failure to separately state and number.
 - (9). Effect of admission of evidence and aider by proof.
- 407. — Technical or formal defects and objections.
- 408. — Failure to state cause of action.
- 409. Waiver of objections to plea or answer or want thereof.
 - (1). In general.
 - (2). Want of plea or answer and joinder in issue thereon.
 - (3). Pleading over and trial on merits.
 - (4). Effect of admission of evidence and aider by proof.
- 410. Waiver of objections to affidavit of defense or want thereof.
- 411. Waiver of objections to set-off or counterclaim or cross-complaint.
- 412. Waiver of objections to replication or reply or want thereof.
- 413. Waiver of objections to pleadings subsequent to replication or want thereof.
- 414. Objections to rulings on pleas in abatement.

XVIII. WAIVER OR CURE OF DEFECTS AND OBJECTIONS.(Cont'd)

- 415. Objections to rulings on demurrer.
- 416. — In general.
- 417. — Waiver by amendment.
- 418. — Waiver by pleading over.
 - (1). In general.
 - (2). Particular defects and objections.
 - (3). Demurrer to plea or answer and subsequent pleadings.
- 419. Objections to rulings on exceptions.
- 420. Objections to amendments and rulings relating thereto.
 - (1). In general.
 - (2). Waiver of objections in general.
 - (3). Waiver by pleading over and trial on merits.
- 421. Objections to supplemental pleadings and rulings relating thereto.
- 422. Want or insufficiency of signature, certificate of counsel, or verification.
- 423. Objections to exhibits or other instruments annexed to or filed with pleadings or want thereof.
- 424. Objections to bill of particulars or copy of account, or want thereof.
- 425. Objections to filing or service.
- 426. Objections to rulings on motions.
 - (1). In general.
 - (2). Waiver by amendment.
 - (3). Waiver by pleading over and trial on merits.
- 427. Objections to evidence as not within issues.
- 428. Objections to evidence on ground of insufficiency of pleading.
 - (1). In general.
 - (2). Sufficiency of pleadings in general.
 - (3). Particular defects or objections in general.
 - (4). Failure to state cause of action or defense.
 - (5). Nature and form of objection.
 - (6). Hearing and determination.
 - (7). Waiver of objection.
- 429. Objections to evidence on ground of insufficiency of bill of particulars or variance between bill and pleading.

303. PLEDGES

XVIII. WAIVER OR CURE OF DEFECTS AND OBJECTIONS.(Cont'd)

430. Objections to evidence on ground of variance.
- (1). In general.
 - (2). Waiver of variance.

XIX. AIDER BY VERDICT OR JUDGMENT.

432. In general.
433. Defects in or want of declaration, complaint, petition, or statement.
- (1). In general.
 - (2). Sufficiency of pleading or allegations in general.
 - (3). Nature of defects or objections in general.
 - (4). Technical or formal defects.
 - (5). Failure to state cause of action or defense.
 - (6). Nature of omission in general.
 - (7). Omissions in actions ex contractu.
 - (8). Omissions in actions ex delicto.
 - (9). Uncertainty, indefiniteness, and argumentativeness.
 - (10). Misjoinder of causes and duplicity.
434. Defects in or want of plea or answer.
435. Defects in set-off or counterclaim or cross-complaint.
436. Defects in or want of replication or reply.
437. Defects in or want of pleadings subsequent to replication.

303. PLEDGES

SUBJECTS INCLUDED

Delivery of possession of personal property as security for payment of money or performance of contracts or other obligations in general

Nature, requisites, incidents, operation and effect of such delivery

Evidence relating thereto

Rights, duties, and liabilities of the parties as between themselves and as to others

Extinguishment, waiver, or release of lien

Sale of property for enforcement of pledge

Redemption

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Corporate stock, pledges of, see CORPORATIONS AND BUSINESS ORGANIZATIONS

Fraud as to creditors and subsequent purchasers, see FRAUDULENT CONVEYANCES

Holders in due course, pledgees of negotiable securities as, see BILLS AND NOTES, BONDS, MUNICIPAL CORPORATIONS, and other specific topics

Particular classes of persons, pledges by or to, see INFANTS, MENTAL HEALTH, and other specific topics—

Corporations, see CORPORATIONS AND BUSINESS ORGANIZATIONS

Partners, see PARTNERSHIP

Unincorporated associations and companies, see ASSOCIATIONS, CORPORATIONS AND BUSINESS ORGANIZATIONS XV

Pawnbrokers, see FINANCE, BANKING, AND CREDIT XIII

Representative or fiduciary capacities, pledges by persons in, see GUARDIAN AND WARD, EXECUTORS AND ADMINISTRATORS, PRINCIPAL AND AGENT

Secured transactions governed by the Uniform Commercial Code, see SECURED TRANSACTIONS

1. Nature and essentials in general.

2. What law governs.

3. Statutory provisions.

4. Pledge distinguished from other transactions.

Pledge distinguished from sale, see SALES §521.

5. Property which may be subject of pledge.

6. Title or interest of pledgor.

7. Debts or liabilities which may be secured.

8. Parties.

9. Consideration.

10. Delivery and possession.

11. — In general.

12. — Written instruments.

303. PLEDGES

13. Pledge in writing.
14. Equitable pledge.
15. Absolute transfer as pledge.
16. Evidence as to character of transaction.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility.
 - (3). Weight and sufficiency.
 - (4). Questions for jury.
17. Recording and registration.
18. Operation and effect in general.
19. Parties and debts or liabilities secured.
20. Property or interest pledged.
21. Title to property pledged.
22. Nature and extent of lien.
23. Priorities.
24. Pledges as bona fide purchasers.
25. Waiver or loss of lien.
26. Possession or control of property.
27. Use or profits of property and expenses incurred.
28. Care of property and negligence of pledgee.
29. Sale or other disposition of property and failure to sell or convert.
30. Enforcement of right of action pledged and failure to collect or fix liability.
 - (.5). In general.
 - (1). Right and duty of pledgor to enforce.
 - (2). Power and duty of pledgee to enforce.
 - (3). Duties and liabilities of pledgeholder.
 - (4). Operation and effect of enforcement.
 - (5). Right of action or defense by pledgor against pledgee for lack of diligence or breach of duty.
31. Conversion of or willful injury to property before default.
 - (1). In general.
 - (2). Assertion of ownership by pledgee.
 - (3). Surrendering securities to obligor.
 - (4). Sale or other disposition of property pledged.
32. Actions for possession or proceeds of property.
 - 32.1. — In general.
33. — Between pledgor and pledgee.
34. — Against third persons.
35. Actions for damages.
 - 35.1. — In general.
36. — Between pledgor and pledgee.
37. — Against third persons.
38. Assignment of pledge or debt.
39. Transfer of property by pledgee.
40. — In general.
41. — Purchasers from pledgee.
42. — Pledgees of pledgee.
43. Transfer of interest of pledgor.
44. Payment or other discharge of debt.
45. Return of property on payment or other discharge.
 - 45.1. — In general.
46. — Duty of pledgee.
47. — Recovery of property by pledgor.
48. — Conversion by failure to return.
49. Redemption.
50. — In general.
51. — Actions to redeem and for accounting.
52. Enforcement.
 - 52.1. — In general.
53. — Remedies of pledgee in general.
54. — Default of pledgor.
55. — Actions on debt or liability secured.
56. — Sale of property.
 - (1). In general.
 - (2). Power of sale.
 - (3). Demand of payment.
 - (4). Notice of sale.
 - (5). Validity of sale in general.
 - (6). Purchase by pledgee.
 - (7). Title or rights of purchaser.
 - (8). Actions to set aside.
57. — Actions to foreclose.
58. — Actions to enforce right of action pledged.
 - (.5). In general.
 - (1). Grounds of action and defenses.
 - (2). Form of remedy.
 - (3). Parties.
 - (4). Pleading.

306. POSTAL SERVICE

- (5). Evidence.
- (5.5). Trial.
- (6). Amount of recovery and judgment.

- 59. — Proceeds and surplus.
- 60. — Operation and effect.

305. POSSESSORY WARRANT

SUBJECTS INCLUDED

Summary proceedings to determine the fact of previous peaceable possession of personal property and to restore it to such previous possessor

Nature and scope of the remedy in general

Grounds of such proceedings and defenses thereto

By and against whom and as to what property such proceedings may be maintained

Procedure therein

Judgments and enforcement thereof

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Actions for damages for taking, converting, or detaining personal property, see CONVERSION AND CIVIL THEFT

Actions for recovery of personal property founded on—

Right of possession, see REPLEVIN

Right of property, see DETINUE

- 1. Nature and scope of remedy.
- 2. Grounds.
- 3. Proceedings for taking and delivery of property.
- 4. Trial and determination.
- 5. Judgment and delivery of possession in general.
- 6. Recognizances for possession and liabilities thereon.
- 7. Certiorari to review proceedings.

306. POSTAL SERVICE

SUBJECTS INCLUDED

Conduct and regulation of communication by mail

Constitutional and statutory provisions relating thereto

Establishment, organization and powers of post office department

Establishment, change, and discontinuance of post offices, post roads, postal routes, etc.

Appointment and removal, rights, powers, duties, and liabilities of postmasters and other postal officers and agents

Carriage of the mails and contracts therefor

Mailable matter, rates of postage thereon, and receipt and delivery thereof

Violations of postal laws

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Notice by mail, see NOTICE, BILLS AND NOTES, and other specific topics

Presumption as to due transmission and delivery of mail, see EVIDENCE

I. POSTAL SERVICE IN GENERAL,

⌘1-12.

II. MAIL IN GENERAL, ⌘13-26.

III. OFFENSES AGAINST POSTAL LAWS, ⌘27-53.

I. POSTAL SERVICE IN GENERAL.

- 1. Control and regulation of postal service in general.
- 2. Constitutional and statutory provisions.
- 3. The postal service.
 - 3.1. — In general.
- 4. — Postmaster General.
- 5. — Officers, clerks, and employees.
- 6. Post offices.
- 7. Postmasters.
 - (1). In general.
 - (2). Liabilities on bonds.
- 8. Deputy and assistant postmasters.
- 9. Clerks in post offices.
- 10. Letter carriers.
 - (.5). In general.
 - (1). Appointment, removal, or reduction in rank.

306. POSTAL SERVICE

I. POSTAL SERVICE IN GENERAL.(Cont'd)

- (2). Compensation in general.
- (3). Hours of work and overtime.
- (4). Liabilities on bonds.
- 11. Special, local, and route agents.
- 12. Postal revenues, property, funds, and accounts.

II. MAIL IN GENERAL.

- 13. Mailable matter in general.
- 14. Exclusion of matter from mails.
- 15. Postage.
- 16. Postage stamps, stamped envelopes, and postal cards.
- 18. Money orders.
- 19. Deposit, collection, and forwarding of mail matter.
- 20. Post roads and routes and modes of conveyance of mails.
- 21. Contracts for carrying mails.
 - (1). In general.
 - (2). Subcontractors, assignees, and substitutes.
 - (3). Bonds.
 - (4). Compensation.
- 22. Carriage of mails.
- 23. Delivery of mail in general.
- 24. Dead letters, unclaimed matter, and requests for return.
- 26. Fraud orders and return of mail to senders.

III. OFFENSES AGAINST POSTAL LAWS.

- 27. Violations of postal regulations in general.
- 28. Obstructing passage of mail.
- 29. Conveyance of mail matter out of mail.
- 30. Mailing obscene matter or matter for indecent or immoral use.
- 31. — In general.
 - 31.1. — Nature and elements of offense in general.
 - 31.2. — Statutory terms defined.
 - 31.3. — Knowledge, motive or intent.
 - 31.4. — Invitation or inducement for improper or obscene purpose.
 - 31.5. — Publications concerning sex and sexual diseases.
 - 31.6. — Information as to birth control or abortions.

III. OFFENSES AGAINST POSTAL LAWS.(Cont'd)

- 31.7. — Matter objectionable in part.
- 31.8. — Entrapment.
- 31.9. — Persons liable.
- 32. — Sealed letters or packages.
- 33. Mailing defamatory or threatening matter.
- 34. Mailing matter concerning lotteries or gift enterprises.
- 35. Use of mails to defraud.
 - (.5). In general.
 - (1). Statutory provisions.
 - (2). Nature and elements of offense in general.
 - (3). Parties to communications.
 - (4). Legality of object.
 - (5). Knowledge and intent in general.
 - (6). Intent that mails be used as part of scheme.
 - (7). Success or possibility of successful issue of artifice or scheme.
 - (8). Effectiveness of matter mailed to further fraud.
 - (9). Injury from fraud.
 - (10). Nature of scheme or device in general.
 - (11). False pretenses or representations.
 - (11.1). — In general.
 - (12). — Value or character of goods.
 - (13). — Future profits.
 - (14). — Financial standing or credit.
 - (15). — Orders for goods.
 - (16). Extortion or blackmail.
 - (17). Selling or offering to sell counterfeit money.
 - (18). Sale of charms or amulets, fortune telling, or pretenses to occult powers.
 - (19). Entrapment.
 - (20). Persons liable.
- 36. Misconduct in official capacity or employment in general.
- 37. Illegal sale or other disposition of postage stamps.
- 38. Embezzlement of money order funds.

307. POWERS

III. OFFENSES AGAINST POSTAL LAWS.(Cont'd)

39. Detention, opening, or destruction of mail matter by postmaster or employee.
40. Embezzlement of mail matter.
41. — In general.
42. — Decoy letters or packages.
43. Taking mail matter to obstruct or pry into correspondence of another.
44. Stealing or fraudulently obtaining mail matter.
45. Robbery of mail.
46. Breaking and entering post office.
47. Searches, seizures, and opening letters or packages.
48. Indictment or information.
 - (.5). In general.
 - (1). Mailing unmailable matter in general.
 - (2). Mailing obscene matter or matter for indecent or immoral use.
 - (3). Mailing matter concerning lotteries.
 - (4). Use of mails to defraud.
 - (4.1). — In general.
 - (4.2). — Scheme or artifice in general.
 - (4.3). — Knowledge, motive or intent.
 - (4.4). — False pretenses or representations.
 - (4.5). — Names and addresses of intended victims.
 - (4.6). — Contents of letters.
 - (4.7). — Use of the mails.
 - (4.8). — Time of devising scheme and depositing mail.
 - (5). Embezzlement of mail matter.
 - (6). Stealing or fraudulently obtaining mail matter.
 - (7). Breaking into post office.
 - (7.5). Miscellaneous offenses.
 - (8). Issues, proof, and variance.
49. Evidence.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility.
 - (2.1). — In general.

III. OFFENSES AGAINST POSTAL LAWS.(Cont'd)

- (3). — Mailing obscene matter or matter for indecent or immoral use.
 - (4). — Mailing matter concerning lotteries or gift enterprises.
 - (5). — Use of mails to defraud.
 - (6). — Embezzlement and stealing or fraudulently obtaining mail matter.
 - (7). — Robbery of mail.
 - (8). Weight and sufficiency.
 - (8.1). — In general.
 - (9). — Mailing obscene matter or matter for indecent or immoral use.
 - (10). — Mailing matter concerning lotteries or gift enterprises.
 - (11). — Use of mails to defraud.
 - (12). — Embezzlement and stealing or fraudulently obtaining mail matter.
 - (13). — Robbery of mail.
 - (14). — Breaking or entering post office.
50. Trial and review.
 51. Sentence and punishment.
 52. Penalties and forfeitures.
 53. Civil liability for obstructing mail.

307. POWERS

SUBJECTS INCLUDED

Authority reserved by or limited to one or more persons to dispose of property or an estate therein vested in another or others

Operation, execution, revocation, and extinguishment of the powers reserved or granted

Rights and liabilities of donors or grantors, donees or grantees, and appointees or other beneficiaries of such powers in general

Remedies relating thereto

307. POWERS

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Agents or attorneys, powers granted to, see
PRINCIPAL AND AGENT

Executor or administrator, power under will
to sell property of estate, see EXECU-
TORS AND ADMINISTRATORS

Mortgages and trust deeds, powers of sale in,
see MORTGAGES AND DEEDS OF
TRUST, CHATTEL MORTGAGES

Trust, powers in, see TRUSTS

Validity and construction of particular instru-
ments reserving or granting powers, see
DEEDS, WILLS, TRUSTS

I. CREATION, EXISTENCE, AND VA- LIDITY, ¶1-15.

II. CONSTRUCTION AND EXECUTION, ¶16-44.

I. CREATION, EXISTENCE, AND VALIDITY.

1. Nature of powers.
2. What law governs.
3. Constitutional and statutory provisions.
4. Property subject of powers.
5. Purposes for which powers may be created.
6. Persons who may create powers.
7. To what persons powers may be granted.
8. Instruments creating powers.
9. Provisions granting or reserving powers in
general.
10. Validity of powers in general.
11. Partial invalidity.
12. Modification or revocation.
13. Duration.
14. Suspension.
15. Release or other extinguishment.

II. CONSTRUCTION AND EXECUTION.

16. General rules of construction.
17. Extent of power granted.
18. — In general.
19. — Appointment or revocation.
20. — Sale, exchange, or mortgage.
21. — Lease.
22. — Management and improvement.
23. Power appendant, in gross, or collateral.
24. Interest of donee or grantee.
25. — In general.

II. CONSTRUCTION AND EXECUTION.(Cont'd)

26. — Rights and remedies of creditors.
27. Power coupled with an interest.
28. Assignment of power or of interest under
power.
29. Duty to execute.
30. Persons authorized to execute.
31. Time of execution.
32. Mode of execution.
33. Intent to execute.
 - (.5). In general.
 - (1). Necessity of showing intent.
 - (2). Reference to power in general.
 - (3). Deeds.
 - (4). Instrument inoperative except as
execution of power.
34. Instrument of execution.
 - (1). In general.
 - (2). Form and requisites of instru-
ment.
35. Supervision of execution by courts.
36. Validity and sufficiency of execution.
 - (1). In general.
 - (2). What law governs.
 - (3). Illusory appointment.
 - (4). Partial invalidity.
37. Aiding defective execution.
38. Execution in excess of power.
39. Failure to execute.
40. Setting aside sale under power.
41. Rights and liabilities of appointees or
beneficiaries.
42. Rights and liabilities of purchasers.
43. — In general.
44. — Application of purchase money.

307A. PRETRIAL PROCEDURE

SUBJECTS INCLUDED

Procedure preliminary to trial in civil actions
generally

Depositions and discovery

Dismissal

307A. PRETRIAL PROCEDURE

Continuance

Pretrial conference

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Criminal procedure, see CRIMINAL LAW
and INDICTMENT AND INFORMATION

Divorce proceedings, see DIVORCE

Docketing or setting cases for trial, see TRI-
AL

Federal court procedure, see FEDERAL
CIVIL PROCEDURE

Judgment

— On pleadings, see PLEADING and
FEDERAL CIVIL PROCEDURE

— Summary or default, generally, see
JUDGMENT and FEDERAL CIVIL
PROCEDURE

Parties, see PARTIES

Pleading, see PLEADING

Privileged communications and confidential
relations, see PRIVILEGED COMMUNI-
CATIONS AND CONFIDENTIALITY

Process, see PROCESS

I. IN GENERAL, ¶1-10.

II. DEPOSITIONS AND DISCOVERY,
¶11-500.

(A) DISCOVERY IN GENERAL,
¶11-60.

(B) PERPETUATION OF TESTIMONY,
¶61-90.

(C) DISCOVERY DEPOSITIONS,
¶91-240.

1. IN GENERAL, ¶91-120.

2. PROCEEDINGS, ¶121-150.

3. EXAMINATION IN GENERAL,
¶151-170.

4. SCOPE OF EXAMINATION,
¶171-200.

5. USE AND EFFECT, ¶201-220.

6. FAILURE TO APPEAR OR TESTI-
FY; SANCTIONS, ¶221-240.

(D) INTERROGATORIES TO PAR-
TIES, ¶241-330.

1. IN GENERAL, ¶241-270.

2. SCOPE, ¶271-300.

3. ANSWERS, ¶301-308.

4. FAILURE TO ANSWER; SANC-
TIONS, ¶309-330.

II. DEPOSITIONS AND DISCOVERY

—Cont'd

(E) PRODUCTION OF DOCUMENTS
AND THINGS AND ENTRY ON
LAND, ¶331-450.

1. IN GENERAL, ¶331-350.

2. SUBJECT MATTER IN GENERAL,
¶351-370.

3. PARTICULAR DOCUMENTS OR
THINGS, ¶371-400.

4. PROCEEDINGS, ¶401-430.

5. COMPLIANCE, ¶431-433.

6. FAILURE TO COMPLY; SANC-
TIONS, ¶434-450.

(F) EXAMINATION OF PERSON,
¶451-470.

(G) REQUESTS FOR ADMISSIONS,
¶471-500.

III. DISMISSAL, ¶501-710.

(A) VOLUNTARY DISMISSAL,
¶501-530.

(B) INVOLUNTARY DISMISSAL,
¶531-710.

1. IN GENERAL, ¶531-550.

2. GROUNDS IN GENERAL,
¶551-580.

3. WANT OF PROSECUTION,
¶581-620.

4. PLEADING, DEFECTS IN, IN
GENERAL, ¶621-640.

5. PARTICULAR ACTIONS OR SUB-
JECT MATTER, DEFECTS IN
PLEADING, ¶641-670.

6. PROCEEDINGS AND EFFECT,
¶671-710.

IV. CONTINUANCE, ¶711-740.

V. PRETRIAL CONFERENCE, ¶741-753.

I. IN GENERAL.

1. Procedure in general.

2. Rulings on questions of law.

3. Motions in limine; preclusion of evidence,
argument, or reference.

II. DEPOSITIONS AND DISCOVERY.

(A) DISCOVERY IN GENERAL.

11. Control by court in general.

12. Constitutional and statutory provisions;
rules.

13. Construction of discovery provisions.

14. Nature and purpose.

14.1. — In general.

15. — Discovering truth, narrowing issues,
and eliminating surprise.

16. — Preparation for pleading or trial.

307A. PRETRIAL PROCEDURE

II. DEPOSITIONS AND DISCOVERY.(Cont'd)

17. Right to discovery and grounds for allowance or refusal.
- 17.1. — In general.
18. — Inconvenience or other detriment.
19. Discretion of court.
20. Liberality in allowance of remedy.
21. Actions and proceedings in which remedy is available.
22. Other remedy, availability or prior use of.
23. Persons subject.
24. Discovery methods and procedure.
25. Sequence and timing; condition of cause.
26. Showing of good cause.
27. Scope of discovery.
- 27.1. — In general.
28. — Grounds of claim or defense; “fishing expedition”.
29. — Matters admitted or otherwise known or available.
30. — Adverse party’s case, matters relating to.
31. Relevancy and materiality.
32. Probable admissibility at trial.
35. Work-product privilege.
36. Particular subjects of disclosure.
- 36.1. — In general.
37. — Insurance, matters relating to.
38. — Information secured in anticipation of litigation or in preparation for trial.
39. — Facts known and opinions held by experts.
40. — Identity and location of witnesses and others.
41. Objections and protective orders.
42. Sufficiency of disclosure; supplementation of responses.
43. Use and effect of disclosure.
44. Failure to disclose; sanctions.
- 44.1. — In general.
45. — Facts taken as established or denial precluded; preclusion of evidence or witness.
46. — Dismissal or default judgment.

(B) PERPETUATION OF TESTIMONY.

61. Nature and functions in general.
62. Time; condition of cause.
63. Right to take and use depositions in general.

II. DEPOSITIONS AND DISCOVERY.(Cont'd)

64. Grounds for taking.
65. Persons whose depositions may be taken.
66. Proceedings and order.
67. Officers or persons authorized to take depositions.
68. Notice of taking.
69. Taking testimony.
- 69.1. — In general.
70. — Attendance of witnesses; compensation.
71. — Examination of witnesses.
72. Scope and subject matter.
73. Punishment of witness refusing to appear or testify; sanctions.
74. Making and requisites of deposition, return or certificate.
75. Use of deposition.
76. Admissibility in evidence.
- 76.1. — In general.
77. — Continued existence of grounds for taking; unavailability of witness.
78. — Part of deposition.
79. — Determination of admissibility.
80. Actions and proceedings in which deposition may be used.
81. Defects and objections.

(C) DISCOVERY DEPOSITIONS.

1. IN GENERAL.

91. Nature and right to examine or take depositions in general.
92. Discretion and leave of court.
93. Grounds and purposes of examination.
94. Actions and proceedings in which depositions may be taken.
95. Other remedy, availability or prior use of; successive examinations.
96. Persons who may be examined.
- 96.1. — In general.
97. — Non-party witnesses in general; experts.
98. — Exclusive or particular knowledge, and hostile or reluctant witnesses, non-parties.
99. — Parties.
100. — Parties’ agents or employees.
101. — Corporate officers, agents, and employees.

307A. PRETRIAL PROCEDURE

II. DEPOSITIONS AND DISCOVERY.(Cont'd)

102. — Public bodies and their officers and employees.

2. PROCEEDINGS.

121. In general.
122. Time and condition of cause.
123. Notice of examination or motion or application for leave to examine.
123.1. — In general.
124. — Sufficiency in general.
125. — Affidavits and evidence.
126. — Subject of examination.
127. — Service; time of notice.
128. — Hearing, determination, and order for taking.
129. Subpoena, compelling attendance.
130. Subpoena duces tecum; production of documents or tangible things.
131. Protective orders before examination.
131.5. — In general.
132. — Vacating notice or order.
133. — Time and place of, and procedure for, taking.
134. — Payment of expenses.
135. — Limiting scope of examination.
136. — Motions for protective orders and proceedings thereon.
137. Terminating or limiting pending oral examination.
138. Persons before whom depositions may be taken.
139. Record of testimony; furnishing copies.

3. EXAMINATION IN GENERAL.

151. In general.
152. Order of taking more than one examination.
153. Time and place of examination.
153.1. — In general.
154. — Nonresident deponents.
155. Written questions, depositions on.
156. Objections and waiver thereof.

4. SCOPE OF EXAMINATION.

171. In general.
172. Grounds of claim or defense.
173. Relevancy and materiality.
174. Probable admissibility at trial of evidence sought.

II. DEPOSITIONS AND DISCOVERY.(Cont'd)

175. Admitted matters and matters already known or available.
176. Business transactions and practices in general.
177. Circumstances of accident or injury and cause thereof.
178. Documents or tangible things, examination involving.
179. Extent of injury or damage.
180. Insurance coverage.
181. Identity and location of witnesses or others.
182. Opinions and conclusions.
186. Work product privilege; trial preparation materials.

5. USE AND EFFECT.

201. Use.
201.1. — In general.
202. — Admissibility in general.
203. — Parties entitled to use and availability of deponent.
204. — Purpose.
205. — Part of deposition.
206. Effect.

6. FAILURE TO APPEAR OR TESTIFY; SANCTIONS.

221. In general.
222. Order compelling answer.
223. Payment of expenses.
224. Facts taken as true or denial precluded; preclusion of evidence or witness.
225. Striking pleadings.
226. Dismissal or default judgment.
227. Contempt.

(D) INTERROGATORIES TO PARTIES.

1. IN GENERAL.

241. Availability and procedure for use in general.
242. Nature and purpose.
243. Discretion and leave of court.
244. Actions in which interrogatories may be served.
245. Other remedy, availability or prior use of.
246. Parties and persons subject to interrogation.

307A. PRETRIAL PROCEDURE

II. DEPOSITIONS AND DISCOVERY.(Cont'd)

- 247. Service or filing; annexation to pleading; time.
- 248. Number, form, and importance.
- 248.1. — In general.
- 249. — Specificity and definiteness.
- 250. Grounds of objection or avoiding answer in general.
- 251. Objections and proceedings thereon.
- 251.1. — In general.
- 252. — Time for objection.
- 253. — Showing in support; burden of proof.
- 254. Amendment or striking out; supplemental interrogatories.
- 255. Protective orders.

2. SCOPE.

- 271. In general.
- 272. Grounds of claim or defenses; relation to issues.
- 273. Relevancy and materiality.
- 274. Probable admissibility at trial of evidence sought.
- 275. Admitted matters and matters already known or available.
- 276. Adverse party's case, matters relating to in general.
- 277. Circumstances of accident or injury and cause thereof.
- 278. Documents or tangible things.
- 279. Extent of injury or damage.
- 280. Evidentiary matters.
- 281. Hearsay.
- 282. Identity and location of witnesses and others.
- 283. Insurance coverage.
- 284. Opinions, conclusions and matters unknown.
- 287. Work product privilege; trial preparation materials.

3. ANSWERS.

- 301. Answers in general.
- 302. Time for answer.
- 303. Sufficiency; option to produce business records.
- 304. Amendment or supplementation.
- 305. Defects and objections; striking out answers.

II. DEPOSITIONS AND DISCOVERY.(Cont'd)

- 306. Use and effect.
- 306.1. — In general.
- 307. — Admissibility in evidence.
- 308. — Persons entitled to use and persons against whom answers may be used.

4. FAILURE TO ANSWER; SANCTIONS.

- 309. In general.
- 310. Order compelling answer.
- 310.1. — In general.
- 311. Payment of expenses.
- 312. Preclusion of evidence or witnesses in general.
- 313. Undisclosed witnesses, preclusion.
- 314. Striking pleadings.
- 315. Dismissal.
- 316. Default judgment.

(E) PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY ON LAND.

1. IN GENERAL.

- 331. Availability in general; nature and scope of remedy.
- 332. Actions and proceedings in which remedy is available.
- 333. Other remedy, availability or prior use of.
- 334. Persons subject.
- 335. Right to remedy and grounds in general.
- 336. Discretion and leave of court.
- 337. Grounds for refusal in general.

2. SUBJECT MATTER IN GENERAL.

- 351. In general.
- 352. Relevancy and materiality.
- 353. Probable admissibility at trial.
- 354. Existence, possession, custody, control, and location.
- 355. Matters known or otherwise available.
- 359. Work product privilege; trial preparation materials.

3. PARTICULAR DOCUMENTS OR THINGS.

- 371. Documents, papers, and books in general.
- 372. Records and reports in general.
- 373. Accident or investigation reports, records, and tests.

307A. PRETRIAL PROCEDURE

II. DEPOSITIONS AND DISCOVERY.(Cont'd)

- 374. Bank records; checks and deposits.
- 375. Business and financial records and reports.
- 376. Contracts, conveyances, and leases.
- 377. Corporate records.
- 378. Employment records.
- 379. Experts' reports; appraisals.
- 380. Government records and papers.
- 381. Insurance policies and related documents.
- 382. Medical and hospital records.
- 383. Photographs; X rays; sound recordings.
- 384. Statements.
- 384.1. — In general.
- 385. — Party's own statements obtained by other party.
- 386. — Statements of witnesses.
- 387. — Statements to insurers.
- 388. Taxes, matters relating to.
- 389. Transcripts or records of prior proceedings.
- 390. Objects and tangible things; entry on land.

4. PROCEEDINGS.

- 401. Procedure in general.
- 402. Time for application; condition of cause.
- 403. Request, notice, or motion and response or objection.
- 404. Affidavits and showing.
- 404.1. — In general.
- 405. — Good cause in general.
- 406. — Privilege.
- 407. — Relevancy and materiality.
- 408. — Designation of document or thing and contents thereof.
- 409. — Statements and reports.
- 410. — Burden of proof.
- 411. Determination.
- 412. Order.
- 413. Protective orders.
- 413.1. — In general.
- 414. — Privileged matters.
- 415. — Payment of expenses; bond.
- 416. Successive applications.

5. COMPLIANCE.

- 431. Compliance in general.
- 432. Time, place, and mode of inspection; copying, photographing, and testing.
- 433. Use of items obtained.

6. FAILURE TO COMPLY; SANCTIONS.

- 434. In general.
- 435. Dismissal or default judgment.

(F) EXAMINATION OF PERSON.

Excludes examinations to determine existence and extent of personal injuries for purpose of determining damages, see DAMAGES ¶206, examinations in divorce cases, see DIVORCE ¶86 and blood tests in paternity proceedings, see CHILDREN OUT-OF-WED-LOCK ¶45.

- 451. In general.
- 452. Discretion of court.
- 453. Mental examination.
- 454. Blood tests.
- 455. Proceedings, order, and examination.
- 456. Use of information obtained.
- 457. Failure to submit to examination; sanctions.

(G) REQUESTS FOR ADMISSIONS.

- 471. In general.
- 472. Nature and purpose.
- 473. Subject matter.
- 474. Request; striking request.
- 475. Duty to respond.
- 476. Time for response.
- 477. Response.
- 477.1. — In general.
- 478. — Denial of duty to respond or statement of inability; objections and protective orders.
- 479. — Admission by defective response.
- 480. Use.
- 481. Effect.
- 482. Failure to respond; sanctions.
- 482.1. — In general.
- 483. — Admission by failure to respond.
- 484. — Directed verdict, dismissal, or judgment.
- 485. Costs and expenses upon improper failure to admit.
- 486. Withdrawal or amendment of response.

307A. PRETRIAL PROCEDURE

III. DISMISSAL.

(A) VOLUNTARY DISMISSAL.

- 501. Right in general.
- 502. Discretion and leave of court.
- 503. Dismissal of part of cause of action.
- 504. Dismissal as to part of parties in general.
- 505. Class actions.
See also COMPROMISE AND SETTLEMENT
51-72.
- 506. Time for dismissal; condition of cause.
- 506.1. — In general.
- 507. — Answer or joinder of issue, effect of in general.
- 508. — Counterclaim or other request for affirmative relief, effect of.
- 509. — Trial, dismissal during.
- 510. Grounds for objection.
- 511. Procedure to effect dismissal in general.
- 512. Motion or request and proceedings thereon.
- 513. Notice.
- 514. Order.
- 515. Terms and conditions.
- 515.1. — In general.
- 516. — Payment of costs and expenses.
- 517. Effect.
- 517.1. — In general.
- 518. — Parties and claims affected.
- 519. — Successive dismissals.
- 520. Vacation.

(B) INVOLUNTARY DISMISSAL.

1. IN GENERAL.

- 531. Nature and scope of remedy in general.
- 532. Statutory provisions; rules.
- 533. Other remedy, availability or prior use of.
- 534. Discretion of court.
- 535. Dismissal of part of action or as to some of parties.
- 536. Parties entitled to dismissal; parties entitled to oppose.
- 537. Estoppel or waiver of right.

2. GROUNDS IN GENERAL.

- 551. In general.
- 552. Vexatious or fictitious suit; mootness.
- 553. Error as to nature or form of remedy.
- 554. Want of jurisdiction.

III. DISMISSAL.(Cont'd)

- 555. Misjoinder of claims or defenses.
- 556. Parties, defects as to.
- 556.1. — In general.
- 557. — Capacity.
- 558. — Nonjoinder.
- 559. — Misjoinder.
- 560. Process, defects and objections as to.
- 561. Affirmative defenses, raising by motion to dismiss.
- 561.1. — In general.
- 562. — Particular defenses.
- 563. Disobedience to order of court or other misconduct.

3. WANT OF PROSECUTION.

- 581. Delay or failure to prosecute in general.
- 582. Obligation to prosecute; diligence.
- 583. Power and discretion of court in general.
- 584. Length of delay in general.
- 585. Limitations as to time for proceeding.
- 585.1. — In general.
- 586. — Limitations as mandatory or discretionary.
- 587. Particular applications, delay or time limitation.
- 588. Delay in filing note of issue or in noting action for trial.
- 589. Commencement of limitation period; time excluded.
- 590. Action taken or prosecution interrupting limitation period.
- 590.1. — In general.
- 591. — Filing note of issue or setting case for trial.
- 592. — Trial.
- 593. Effect of continuance or application therefor.
- 594. Excuses for delay.
- 594.1. — In general.
- 595. — Impossibility, impracticality, or futility of proceeding.
- 596. — Inadvertence or neglect; delay attributable to counsel.
- 597. — Delay caused by or consented to by opponent.
- 598. — Absence or unavailability of party or witness.
- 599. — Compromise, settlement, or negotiations.

307A. PRETRIAL PROCEDURE

III. DISMISSAL.(Cont'd)

- 600. — Death or disability.
- 601. — Pendency of other proceedings.
- 602. Prejudice from delay.

4. PLEADING, DEFECTS IN, IN GENERAL.

- 621. Defects and objections ground for dismissal in general.
- 622. Insufficiency in general.
- 623. Clear and certain nature of insufficiency.
- 623.1. — In general.
- 624. — Availability of relief under any state of facts provable.
- 625. Pleading good in part.
- 626. Inconsistency, uncertainty, indefiniteness, or lack of particularity.
- 627. Counterclaims and cross-complaints.
- 628. Prayer for relief; allegations of damages.
- 629. Filing or service, defects in.

5. PARTICULAR ACTIONS OR SUBJECT MATTER, DEFECTS IN PLEADING.

- 641. Automobiles, aviation, railroads, and carriers.
- 642. Bills, notes, and bonds; mortgages, pledges, liens.
- 643. Contracts; sales.
- 644. Corporations and associations; bank and trust companies; securities.
- 645. Indemnity and contribution.
- 646. Insurance.
- 647. Labor and employment; injuries to employees.
- 648. Libel and slander.
- 649. Negligence, personal injuries, and death; products liability.
- 650. Property in general; deeds and leases; eminent domain.
- 651. Torts in general.
- 652. Other actions.

6. PROCEEDINGS AND EFFECT.

- 671. Nature and form of proceeding.
- 671.1. — In general.
- 672. — Relation to demurrer.
- 673. Time for motion; condition of cause.
- 674. Dismissal on court's own motion; automatic dismissal.
- 675. Motion and proceedings thereon.
- 676. Notice or demand.

III. DISMISSAL.(Cont'd)

- 677. Curing defects after motion.
- 678. Hearing and determination in general.
- 679. Construction of pleadings.
- 680. Fact questions.
- 681. Matters considered in general.
- 682. Evidence.
- 682.1. — In general.
- 683. — Presumptions and burden of proof.
- 684. — Sufficiency and effect.
- 685. Affidavits or other showing of merit.
- 686. Matters deemed admitted.
- 686.1. — In general.
- 687. — Well-pleaded facts.
- 688. — Particular admissions.
- 689. Matters not admitted.
- 690. Dismissal with or without prejudice.
- 691. Order in general.
- 692. Terms and conditions.
- 693. Operation and effect.
- 693.1. — In general.
- 694. — Adjudication on merits.
- 695. Amendment or pleading over.
- 696. Vacating or setting aside dismissal.
- 696.1. — In general.
- 697. — After dismissal for want of prosecution.
- 698. — Time for vacation.
- 699. — Proceedings.

IV. CONTINUANCE.

- 711. Nature and power to grant; statutes and court rules.
- 712. Right to continuance in general.
- 713. Discretion of court.
- 714. Grounds for continuance in general.
- 715. Absence, death, or disability of party.
- 716. Absence, death, or disability of counsel.
- 717. Absence of witness or evidence.
- 717.1. — In general.
- 718. — Diligence.
- 719. Surprise.
- 720. Amendment of pleadings or change of parties.
- 721. Want of preparation.
- 722. Admissions to prevent continuance.
- 723. Motion and proceedings thereon.
- 723.1. — In general.
- 724. — Affidavits and evidence.

307A. PRETRIAL PROCEDURE

IV. CONTINUANCE.(Cont'd)

- 725. Determination and order.
- 726. Second or further continuance.

V. PRETRIAL CONFERENCE.

- 741. Nature and conduct in general.
- 742. Purpose and scope.
- 742.1. — In general.
- 743. — Simplification and elimination of issues.
- 744. — Evidence and witnesses; disclosure and exchange of information.
- 745. — Determination of issues; judgment; dismissal.
- 746. Failure to attend; sanctions.
- 747. Order and record or report.
- 747.1. — In general.
- 748. — Amendment or modification.
- 749. Effect.
- 749.1. — In general.
- 750. — Limitation of issues in general.
- 751. — Particular issues, elimination of.
- 752. — Admissibility of evidence.
- 753. — Competency of undisclosed witnesses.

308. PRINCIPAL AND AGENT

SUBJECTS INCLUDED

Relation of agency created by letters of attorney or other express appointment, or arising by implication

Extent and exercise of the authority conferred and ratification of assumed authority

Rights, powers, duties, and liabilities of the parties as between themselves and as to others incident to the relation

Legal proceedings relating thereto

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Corporate or public officers and agents, see CORPORATIONS AND BUSINESS ORGANIZATIONS, PUBLIC EMPLOY-

MENT and topics relating to particular officers

Marital or parental relations, agency implied from or incident to, see MARRIAGE AND COHABITATION, PARENT AND CHILD

Particular vocations or occupations, agency involved in the exercise of, see ATTORNEY AND CLIENT, BROKERS, FACTORS, INSURANCE, and other specific topics

I. THE RELATION, ¶1-46.

(A) CREATION AND EXISTENCE, ¶1-29.

(B) TERMINATION, ¶29.5-46.

II. MUTUAL RIGHTS, DUTIES, AND LIABILITIES, ¶47-90.

(A) EXECUTION OF AGENCY, ¶47-80.

(B) COMPENSATION OF AGENT, ¶81-89.

(C) LIEN OF AGENT, ¶90.

III. RIGHTS AND LIABILITIES AS TO THIRD PERSONS, ¶91-199.

(A) POWERS OF AGENT, ¶91-137.

(B) UNDISCLOSED AGENCY, ¶138-146.

(C) UNAUTHORIZED AND WRONGFUL ACTS, ¶147-162.

(D) RATIFICATION, ¶163-176.

(E) NOTICE TO AGENT, ¶177-182.

(F) ACTIONS, ¶183-199.

I. THE RELATION.

(A) CREATION AND EXISTENCE.

1. Nature of the relation in general.
2. What law governs.
3. Agency distinguished from other relations.
 - (1). In general.
 - (2). Contractor.
 - (3). Loan.
 - (4). Tenancy.
 - (5). Trust.
4. Capacity to appoint agent.
5. Capacity to act as agent.
6. Disqualification of agent by interest.
7. Appointment of agent.
8. — In general.
9. — Agreements for appointment.
10. — Letters or powers of attorney under seal.

308. PRINCIPAL AND AGENT

I. THE RELATION.(Cont'd)

- (1). In general.
- (2). Acknowledgment and record.
11. — Instruments in writing not under seal.
12. — Parol appointment or authority.
13. — Acceptance by agent.
14. Implied agency.
 - (1). In general.
 - (2). Conduct of parties in general.
 - (3). Transactions relating to loans and negotiable instruments.
 - (4). Possession of instruments.
15. Joint principals.
16. Joint agents.
17. Subagency.
18. Evidence of agency.
- 18.1. — In general.
19. — Presumptions and burden of proof.
20. — Admissibility in general.
 - (1). In general.
 - (2). Course of dealing and other transactions.
21. — Testimony of agent.
22. — Declarations and acts of agent.
 - (1). In general.
 - (2). Admissibility as dependent on admission of other evidence.
 - (3). Effect of knowledge of principal.
23. — Weight and sufficiency.
 - (1). In general.
 - (2). Character of evidence necessary.
 - (3). Facts showing agency in general.
 - (4). Facts showing agency for purchase or sale of property.
 - (5). Sufficiency to support verdict or finding as to agency.
24. Questions for jury.
25. Estoppel to assert or deny agency.
 - (5). In general.
 - (1). Estoppel as to principal.
 - (2). Estoppel as to agent.
 - (3). Estoppel as to third persons.
26. Scope and extent of agency.
- 26.5. Modification.
27. Assignment of contracts of agency.
28. Duration.
29. Extension or renewal.

(B) TERMINATION.

- 29.5. In general.
30. Expiration of term.
31. Fulfillment of purpose.
32. Revocation by principal.
33. — In general.
34. — Agency coupled with interest.
35. — Agency conferred for consideration.
36. — Acts constituting revocation in general.
37. — Revocation of letters or powers of attorney.
38. — Notice of revocation.
39. — Time of taking effect.
40. — Evidence of revocation.
41. — Damages for revocation or breach of contract.
 - (1). In general.
 - (2). Termination of relationship.
 - (3). Actions for damages in general.
 - (4). Evidence.
 - (5). Questions for jury.
 - (6). Measure and amount of damages.
42. Disability of principal.
43. Death of principal.
 - (1). In general.
 - (2). Agency coupled with interest.
 - (3). Acts done in ignorance of principal's death.
44. Renunciation by agent.
45. Disqualification of agent.
46. Death of agent.

II. MUTUAL RIGHTS, DUTIES, AND LIABILITIES.

(A) EXECUTION OF AGENCY.

47. Duties of principal.
48. Nature of agent's obligation.
49. Authority conferred as between principal and agent.
50. — In general.
51. — Construction of letters or powers of attorney.
52. — Implied authority.
53. — Liability for exceeding authority.
54. Delegation or substitution.
55. Mode of executing authority.
56. — In general.
57. — Special directions of principal.

308. PRINCIPAL AND AGENT

II. MUTUAL RIGHTS, DUTIES, AND LIABILITIES.(Cont'd)

- 58. — Usage or course of business.
- 59. — Discretion of agent.
- 60. — Liability for improper execution.
- 61. Skill and care required.
 - (1). In general.
 - (2). Gratuitous agency.
- 62. Custody and care of principal's property.
 - (1). In general.
 - (2). Investments or loans.
 - (3). Insurance and taxes.
- 63. Sale or other disposition of principal's property and proceeds thereof.
 - (.5). In general.
 - (1). Authority and duty of agent in general.
 - (2). Price and terms of sale.
 - (3). Liability of agent for price in general.
 - (4). Liability of agent for notes taken on sales.
- 64. Collection of debts due principal.
 - (.5). In general.
 - (1). Authority, duty, and liability of agent in general.
 - (2). Medium of payment.
 - (3). Mode of remittance.
- 65. Deposits and payments for principal.
- 66. Keeping and rendering accounts.
- 67. Liability for interest.
- 68. Failure to act.
- 69. Individual interest of agent.
 - (1). In general.
 - (2). Duty of agent to account for profits of agency.
 - (3). Transactions between principal and agent in general.
 - (4). Agent to sell, selling to himself.
 - (5). Agent to purchase, buying from himself.
 - (6). Purchases by agent for himself.
 - (7). Acquisition of adverse right or title.
 - (8). Transactions after termination of agency.
- 70. Acting for parties adversely interested.
- 71. Fraud.
- 72. Conversion or embezzlement.
- 73. Subagents.

II. MUTUAL RIGHTS, DUTIES, AND LIABILITIES.(Cont'd)

- 74. Joint agents.
- 75. Repudiation or ratification of agent's acts.
- 76. Estoppel as between principal and agent.
 - (1). In general.
 - (2). Estoppel to urge illegality.
- 77. Indemnity to agent from liability to third persons.
- 77.5. Deposits by agent as security.
- 78. Actions for accounting.
 - (.5). In general.
 - (1). Rights of action, defenses, and conditions precedent.
 - (2). Nature and form of remedy.
 - (2.1). Time to sue, limitations and laches.
 - (2.5). Parties.
 - (3). Pleading.
 - (4). Presumptions and burden of proof.
 - (5). Admissibility of evidence.
 - (6). Weight and sufficiency of evidence.
 - (6.5). Questions for jury.
 - (7). Instructions.
 - (8). Judgment and measure of damages.
- 79. Actions for negligence or wrongful acts of agent.
 - (.5). In general.
 - (1). Rights of action and defenses.
 - (2). Conditions precedent.
 - (3). Remedies.
 - (4). Pleading.
 - (5). Evidence.
 - (6). Trial in general.
 - (7). Questions for jury.
 - (8). Instructions.
 - (9). Judgment and measure of damages.

(B) COMPENSATION OF AGENT.

- 81. Right to compensation in general.
 - (1). In general.
 - (2). Right to compensation for particular services.
 - (3). Damages in lieu of compensation.
 - (4). Contract as to compensation.
 - (5). Termination of agency.

308. PRINCIPAL AND AGENT

II. MUTUAL RIGHTS, DUTIES, AND LIABILITIES.(Cont'd)

- (6). Failure to account.
- (7). Compensation from both parties.
- 82. Amount of salary or commission.
- 83. Additional compensation.
- 84. Deductions and forfeitures.
- 85. Reimbursement of advances, expenses, and losses.
- 86. Agency executed in part.
- 87. Services after termination of agency.
- 88. Subagents.
- 89. Actions for compensation.
 - (.5). In general.
 - (1). Defenses in general.
 - (2). Set-off and counterclaim.
 - (3). Remedies.
 - (3.5). Venue.
 - (4). Time to sue.*See also LIMITATION OF ACTIONS.*
 - (4.5). Parties.
 - (5). Pleading.
 - (6). Presumptions and burden of proof.
 - (7). Admissibility of evidence.
 - (8). Weight and sufficiency of evidence.
 - (9). Questions for jury.
 - (10). Instructions.
 - (11). Judgment.

(C) LIEN OF AGENT.

- 90. Lien.
 - (1). In general.
 - (2). Enforcement.

III. RIGHTS AND LIABILITIES AS TO THIRD PERSONS.

(A) POWERS OF AGENT.

- 91. Representation of principal.
- 92. — In general.
 - (1). In general.
 - (2). Payment to authorized agent.
 - (3). Execution of agency.
- 93. — General agency.
- 94. — Special agency.
- 95. Express authority.
- 96. — In general.

III. RIGHTS AND LIABILITIES AS TO THIRD PERSONS.(Cont'd)

- 97. — Construction of letters or powers of attorney.
- 98. Implied and apparent authority.
- 99. — In general.
- 100. — Principal's property and business.
 - (.5). In general.
 - (1). Possession of property.
 - (2). Lease of property.
 - (3). Mortgage of property.
 - (4). Pledge of property.
 - (5). Easements and licenses.
 - (6). Transaction of business for principal in general.
 - (7). Forming partnership.
- 101. — Contracts in general.
 - (1). In general.
 - (2). Contracts with common carriers.
 - (3). Contracts with salesmen.
 - (4). Contracts for building and repairs.
 - (5). Contracts for light, heat, and power.
 - (6). Contracts for advertising.
- 102. — Contracts of employment.
 - (1). In general.
 - (2). Employment of attorney.
 - (3). Employment of physician or surgeon.
 - (4). Employment of nurse.
- 103. — Purchases, sales, and conveyances.
 - (.5). In general.
 - (1). Purchases in general.
 - (2). Existence of authority to purchase.
 - (3). Property which may be purchased.
 - (4). Purchase on credit.
 - (5). Release or modification of contract of purchase.
 - (6). Sales and conveyances in general.
 - (7). Existence of authority to sell or convey.
 - (8). Property which may be sold or conveyed.
 - (9). Acquiescence or approval of principal.
 - (10). Purpose and terms of and consideration for sale or conveyance.
 - (11). Sale on credit.

308. PRINCIPAL AND AGENT

III. RIGHTS AND LIABILITIES AS TO THIRD PERSONS.(Cont'd)

- (12). Conditions in contract of sale.
- (13). Exchange of property.
- (14). Release or modification of contract.
- 104. — Warranties.
 - (1). In general.
 - (2). Power to warrant.
- 105. — Collection of debts due principal.
 - (1). In general.
 - (2). Authority to collect in general.
 - (3). Authority of agent making loan or investment or having possession of securities.
 - (4). Authority of sales agent.
 - (5). Authority to collect before maturity.
 - (6). Authority to collect instrument without possession in general.
 - (7). Authority to collect note without possession at place where it is payable.
 - (8). Authority to collect interest as authorizing collection of principal.
 - (9). Medium of payment in general.
 - (10). Payment of agent's indebtedness.
 - (11). Application of payment.
 - (12). Authority to credit or receipt for amount.
 - (13). Transfer of claim.
- 106. — Deposits and payments.
- 107. — Pledging principal's credit.
 - (5). In general.
 - (1). Authority to pledge credit in general.
 - (2). Borrowing money.
- 108. — Loans and securities.
 - (5). In general.
 - (1). Loans to agent.
 - (2). Loans by agent.
 - (3). Authority to receive money.
- 109. — Negotiable instruments.
 - (5). In general.
 - (1). Execution of notes.
 - (2). Execution of bills of exchange, drafts and checks.
 - (3). Acceptance of bills of exchange.
 - (4). Indorsement of negotiable instruments.

III. RIGHTS AND LIABILITIES AS TO THIRD PERSONS.(Cont'd)

- (5). Authority to take and transfer notes.
- 110. — Guaranty and suretyship.
 - (5). In general.
 - (1). Authority to make guaranty.
 - (2). Authority to make contract of suretyship.
- 111. — Release.
 - (1). In general.
 - (2). Release of liens and securities.
- 111.1. — Settlement.
- 111.2. — Compromise.
- 111.3. — Extension of time.
- 112. — Submission to arbitration.
- 113. — Conduct of litigation.
 - (1). In general.
 - (2). Foreclosure of mortgage.
- 114. — Confession of judgment.
- 115. — Representations.
 - (1). In general.
 - (2). As to property sold or leased.
- 116. Undisclosed limitation of authority.
 - (1). In general.
 - (2). Limitation of power to warrant.
- 117. Necessity of writing or seal to confer power.
 - (1). In general.
 - (3). Sealed instruments in general.
 - (4). Lease or mortgage.
 - (5). Suretyship.
- 118. Evidence as to authority.
- 118.1. — In general.
- 119. — Presumptions and burden of proof.
 - (1). In general.
 - (2). Sale and transfer of property in general.
 - (3). Lease.
 - (4). Contract of employment.
 - (5). Receiving payment.
 - (6). Guaranties and warranties.
 - (7). Compromise.
- 120. — Admissibility in general.
 - (1). In general.
 - (2). Parol evidence.
 - (3). Letters.
 - (4). Evidence of conversations.
 - (5). Declarations of principal.

308. PRINCIPAL AND AGENT

**III. RIGHTS AND LIABILITIES AS TO
THIRD PERSONS.(Cont'd)**

- (6). Evidence of other and similar transactions by agent.
- (7). Recognition of authority.
- 121. — Testimony of agent.
- 122. — Declarations and acts of agent.
 - (5). In general.
 - (1). Declarations and acts in general.
 - (2). Declarations accompanying acts.
 - (3). Declarations of deceased agent.
- 123. — Weight and sufficiency.
 - (1). In general.
 - (2). Testimony of agent.
 - (3). Sufficiency to support verdict or finding.
 - (4). Evidence of other and similar transactions.
 - (5). Declarations of principal.
 - (6). Declarations, representations, and acts of agents.
 - (7). Authority to sell, purchase, or exchange.
 - (8). Authority to make contracts of employment.
 - (9). Authority to make or indorse negotiable instruments.
 - (10). Authority to receive payment.
 - (11). Authority as to lease of property.
 - (12). Authority to make contracts of suretyship.
- 124. Questions for jury.
 - (1). In general.
 - (2). Contracts in general.
 - (3). Purchase or sale and collection of debts.
- 125. Acting in principal's name.
- 125.1. — In general.
- 126. — Execution of written instruments.
 - (1). In general.
 - (2). Contracts in general.
 - (3). Negotiable instruments.
 - (4). Deeds.
 - (5). Leases.
 - (6). Reference to power.
- 127. Rights acquired.
- 127.1. — In general.
- 128. — Agent's acts in general.
- 129. — Agent's contracts.
- 130. Liabilities incurred.

**III. RIGHTS AND LIABILITIES AS TO
THIRD PERSONS.(Cont'd)**

- 130.1. — In general.
 - 131. — Agent's acts in general.
 - 132. — Agent's contracts.
 - (1). In general.
 - (2). Conduct of business in agent's name.
 - 133. — Credit given to agent.
 - 134. — Agent for both parties.
 - 135. — Agent of foreign principal.
 - 136. — Liabilities of agent.
 - (1). In general.
 - (2). Contracts in name of or for benefit of principal.
 - (3). Contracts in name of agent.
 - (4). Payments to or by agent.
 - (5). Credit given to agent.
 - (6). Absent, foreign, or nonexistent principal.
 - 137. Estoppel to deny authority.
 - (1). In general.
 - (2). Estoppel by representations.
- (B) UNDISCLOSED AGENCY.**
- 138. Duty to disclose agency.
 - 139. Acting in agent's name.
 - 139.1. — In general.
 - 140. — Effect in general.
 - 141. — Execution of written instruments.
 - 142. Constructive notice and facts putting third persons on inquiry.
 - 143. Rights of undisclosed principal.
 - (1). In general.
 - (2). Contracts in general.
 - (3). Contracts of sale or purchase.
 - (4). Contracts for transportation.
 - (5). Rights and equities of third person against agent.
 - (6). Payment to agent.
 - 144. Rights of agent of undisclosed principal.
 - 145. Liabilities of undisclosed principal.
 - (1). In general.
 - (2). Agents' contracts in general.
 - (3). Contracts of purchase or sale.
 - (4). Election to hold principal or agent.
 - 146. Liabilities of agent of undisclosed principal.

308. PRINCIPAL AND AGENT

III. RIGHTS AND LIABILITIES AS TO THIRD PERSONS.(Cont'd)

- (1). In general.
- (2). Contracts in general.
- (3). Contracts of purchase or sale.

(C) UNAUTHORIZED AND WRONGFUL ACTS.

- 147. Duty to disclose or ascertain authority.
 - (.5). In general.
 - (1). Duty to disclose authority.
 - (2). Duty to ascertain authority in general.
 - (3). Special agency.
 - (4). Payment to agent.
- 148. Knowledge or notice of extent of authority.
 - (1). In general.
 - (2). Constructive notice and facts putting third persons on inquiry.
 - (3). Evidence of extent of authority and knowledge or notice thereof.
 - (4). Effect of knowledge or notice.
 - (5). Effect of want of notice.
- 149. Unauthorized assumption of agency.
 - (.5). In general.
 - (1). Liabilities of principal.
 - (2). Liabilities of agent.
 - (3). Rights of third persons.
- 150. Effect of exceeding authority in general.
 - (1). In general.
 - (2). Rights and liabilities of principal.
 - (3). Liabilities of agent.
- 151. Acting after termination of authority.
 - (1). In general.
 - (2). Dealing with agent with knowledge of termination of authority.
 - (3). Dealing with agent without knowledge of termination.
 - (4). Estoppel of principal to deny liability.
- 152. Unauthorized dealings with principal's property.
 - (1). In general.
 - (2). Pledge of property.
 - (3). Lease of property.
 - (4). Sale and conveyance of property.
- 153. Payments by agent.
- 154. Payments to agent.

III. RIGHTS AND LIABILITIES AS TO THIRD PERSONS.(Cont'd)

- (1). In general.
- (2). Liabilities of agent.
- 155. Unauthorized contracts of agent.
 - (.5). In general.
 - (1). Rights and liabilities of principal in general.
 - (2). Contracts in writing.
 - (3). Purchase of property.
 - (4). Liabilities of agent.
- 156. Representations of agent.
- 157. Acting for parties adversely interested.
- 158. Fraud of agent.
- 159. Negligence or wrongful acts of agent.
 - (.5). In general.
 - (1). Rights and liabilities of principal.
 - (2). Liabilities of agent.
- 160. Negligence or wrongful acts of agent's employees.
- 160.5. Individual interest of agent.
- 161. Repudiation by principal.
 - (.5). In general.
 - (1). Necessity for repudiation.
 - (2). Right to repudiate.
 - (3). Time for repudiation.
 - (4). Mode and form of repudiation.
 - (5). Retention of benefits or other adoption of act.
 - (6). Operation and effect of repudiation.
- 162. Torts by third persons.
 - (D) RATIFICATION.
- 163. Nature and grounds in general.
 - (1). In general.
 - (2). Necessity of new consideration.
 - (3). Power of agent to ratify his own acts or acts of subagent.
- 164. Acts capable of ratification.
 - (1). In general.
 - (2). Wrongful acts.
- 165. Capacity of principal.
- 166. Knowledge of facts.
 - (1). In general.
 - (2). Particular contracts or transactions.
 - (2.1). — In general.

308. PRINCIPAL AND AGENT

III. RIGHTS AND LIABILITIES AS TO THIRD PERSONS.(Cont'd)

- (3). — Contracts of sale or exchange.
- (4). — Representations and warranties.
- (5). — Purchases on credit.
- (6). Evidence of knowledge.
- 167. Express ratification.
- 168. Implied ratification.
- 169. — In general.
 - (1). In general.
 - (2). Acts constituting ratification in general.
 - (3). Acts not amounting to ratification.
- 170. — Acquiescence.
 - (1). In general.
 - (2). Approval or recognition of agent's acts or contracts.
 - (3). Failure to repudiate agent's acts or delay in repudiating.
 - (4). Retaining agent in employment.
 - (5). Proceedings against agent.
- 171. — Acceptance of benefits.
 - (1). In general.
 - (2). Negotiable instruments and loans.
 - (3). Leases.
 - (4). Representations and warranties.
 - (5). Property acquired or purchased by agent.
 - (6). Collections, compromises, and settlements.
 - (7). Sale or transfer of property.
 - (8). Services.
 - (9). Suit for benefits or attempt to enforce contract.
- 172. Ratification in part.
- 173. Evidence of ratification.
 - (5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility.
 - (3). Weight and sufficiency.
- 174. Questions for jury.
- 175. Operation and effect.
 - (1). In general.
 - (2). Agent's contracts.
 - (3). Retroactive operation and intervening rights.
- 176. Retraction.

(E) NOTICE TO AGENT.

- 177. Imputation to principal in general.
 - (1). In general.
 - (2). Agent's acts or agreements.
 - (3). Notice of particular facts.
 - (3.1). — In general.
 - (4). — Of condition of property and facts affecting value in general.
 - (5). — Of usury.
 - (6). — Of facts affecting title.
- 178. Scope of agency or authority.
 - (1). In general.
 - (2). Employees or messengers.
 - (3). Agent of state.
 - (4). Salesmen.
- 179. Time of notice to agent.
 - (5). In general.
 - (1). Knowledge acquired during agency.
 - (2). Knowledge acquired previous to agency.
 - (3). Knowledge acquired after termination of agency or business.
- 180. Adverse interest of agent.
- 181. Collusion or fraud of agent.
- 182. Evidence of knowledge.

(F) ACTIONS.

- 183. Rights of action by principal or agent, or both.
 - (5). In general.
 - (1). Actions by or in the name of principal or agent in general.
 - (2). Actions by or in the name of principal or agent on agent's contracts.
 - (3). Actions for fraud practiced on agent.
 - (4). Actions on lease.
 - (5). Conditions precedent.
- 184. Rights of action against principal or agent or both.
 - (5). In general.
 - (1). Rights and remedies in general.
 - (2). Election of remedies.
- 185. Defenses against principal or agent.
- 186. Defenses by principal or agent.
- 187. Jurisdiction and venue.
- 188. Parties.

308. PRINCIPAL AND AGENT

III. RIGHTS AND LIABILITIES AS TO THIRD PERSONS. (Cont'd)

- 189. Pleading.
 - (.5). In general.
 - (1). Complaint.
 - (2). Answer in general.
 - (3). Affidavit of defense.
 - (3.5). Reply and subsequent pleadings.
 - (4). Issues, proof, and variance.
- 190. Evidence.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility.
 - (3). Weight and sufficiency.
- 191. Trial.
- 191.1. — In general.
- 193. — Questions for jury.
- 194. — Instructions.
 - (1). In general.
 - (2). As to agent's authority.
 - (3). As to ratification.
 - (4). As to agent's individual liability.
 - (5). As to notice to agent.
- 195. — Verdict and findings.
- 197. Judgment and enforcement thereof.
- 199. Costs.

309. PRINCIPAL AND SURETY

SUBJECTS INCLUDED

- Promises to be bound, with and for another primarily liable, for the payment of a debt or performance of a duty or contract or other obligation by him
- Nature, requisites, validity, incidents, construction, operation and effect of such promises in general
- Organization, franchises, powers, and dealings of surety companies
- Rights, liabilities, and remedies of sureties, principals, and creditors

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Collateral promises of—
 - Guaranty, see GUARANTY
 - Indemnity, see INDEMNITY
- Liabilities of sureties for performance of—
 - Particular acts in judicial proceedings, see ARREST, CREDITORS' REMEDIES, INJUNCTION, REPLEVIN, APPEAL AND ERROR, COSTS, and other specific topics
 - Particular classes of fiduciary or official duties, see GUARDIAN AND WARD, EXECUTORS AND ADMINISTRATORS, TRUSTS, PUBLIC EMPLOYMENT and topics relating to specific officers
- Particular classes of persons, contracts of suretyship by, see INFANTS, MENTAL HEALTH, and other specific topics—
 - Corporations, see CORPORATIONS AND BUSINESS ORGANIZATIONS
 - Partners, see PARTNERSHIP
- Particular forms of contracts or instruments of suretyship, see BONDS, BAIL, UNDERTAKINGS

- I. CREATION AND EXISTENCE OF RELATION, ¶1-58.
 - (A) BETWEEN INDIVIDUALS, ¶1-51.
 - (B) SURETY COMPANIES, ¶52-58.
- II. NATURE AND EXTENT OF LIABILITY OF SURETY, ¶59-87.
- III. DISCHARGE OF SURETY, ¶88-131.
- IV. REMEDIES OF CREDITORS, ¶132-166.
- V. RIGHTS AND REMEDIES OF SURETY, ¶167-200.
 - (A) AS TO CREDITOR, ¶167-172.
 - (B) AS TO PRINCIPAL, ¶173-190.5.
 - (C) AS TO CO-SURETY, ¶191-200.

I. CREATION AND EXISTENCE OF RELATION.

(A) BETWEEN INDIVIDUALS.

- 1. Nature of the relation.
- 2. What law governs.
- 3. Statutory provisions.
- 4. Suretyship distinguished from other contracts.
- 5. — In general.
- 6. — Guaranty.

309. PRINCIPAL AND SURETY

I. CREATION AND EXISTENCE OF RELATION.(Cont'd)

7. Validity of obligation of principal.
8. Capacity of parties.
9. Creation of relation in general.
10. Express contracts.
11. Implied contracts.
12. — In general.
13. — Execution of joint obligation.
14. — Assumption of debt of another.
15. — Mortgage or pledge to secure debt of another.
16. Change from principal debtor to surety.
- 16.5. Change from surety to principal debtor.
17. Notice to creditor of relation.
18. Execution of written instruments.
19. — In general.
20. — By principal.
21. — By surety.
22. — By cosureties.
23. — Conditional signature.
 - (1). In general.
 - (2). Notice of condition.
24. — Instruments under seal.
25. Delivery of written instruments.
26. — In general.
27. — Conditional delivery.
28. — Acceptance and notice thereof.
29. Incomplete instruments.
30. Consideration.
- 30.1. — In general.
31. — Necessity.
32. — Effect of seal.
33. — Sufficiency in general.
34. — Executed consideration to principal.
35. — Forbearance to principal.
36. — Want of consideration.
37. — Failure of consideration.
38. Validity of assent in general.
39. Mistake or misrepresentation.
40. Fraud.
41. — In general.
42. — Concealment.
43. Duress and undue influence.
44. Illegality.
45. Evidence of existence of relation.
46. Estoppel or waiver as to defects or objections.
47. Ratification.

I. CREATION AND EXISTENCE OF RELATION.(Cont'd)

48. Effect of invalidity.
49. Cancellation for invalidity.
50. Modification.
51. Duration and termination of relation in general.

(B) SURETY COMPANIES.

52. Control and regulation in general.
53. Statutory provisions.
54. Incorporation and organization.
55. Officers and agents.
56. Corporate powers and functions.
57. Execution and delivery of bonds or other obligations.
58. Foreign companies.

II. NATURE AND EXTENT OF LIABILITY OF SURETY.

59. General rules of construction.
60. What law governs.
61. Parties liable as sureties.
- 61.1. — In general.
62. — Joint or several.
63. Subject-matter in general.
64. Transfer of subject-matter and security.
65. Nature of liability.
66. Scope and extent of liability in general.
 - (1). In general.
 - (2). Liability of principal as measure of liability of surety.
67. Commencement and duration of liability.
68. Term or period covered.
69. — In general.
70. — Pre-existing liabilities or defaults.
71. — Successive terms or periods.
72. Limitation as to amount.
73. Interest, costs, attorney fees, and damages.
74. Conditions of liability.
75. Performance of contract or conditions by creditor.
76. Breach or fulfillment of condition by principal in general.
77. Debt secured and payment thereof by principal.
78. Property or funds covered, disposition thereof, and accounting by principal.

309. PRINCIPAL AND SURETY

II. NATURE AND EXTENT OF LIABILITY OF SURETY.(Cont'd)

- 79. Duties of office or employment, and performance thereof by principal.
- 80. Performance of contract by principal.
- 81. — In general.
- 82. — Building contracts.
 - (1). In general.
 - (2). Extent of liability.
- 83. Estoppel to assert or deny liability.
- 86. Acts requisite to fix liability.
- 87. Time of accrual of liability.

III. DISCHARGE OF SURETY.

- 88. Provisions of contract of suretyship in general.
- 89. Subsequent release or agreement.
- 90. Operation of law in general.
- 91. Death of principal.
- 92. Death of surety.
- 93. Diversion of instrument to unauthorized purpose.
- 94. — In general.
- 95. — Negotiable instruments.
- 96. Change in obligation or duty of principal.
- 97. — In general.
- 98. — Duties of office or employment.
- 99. — Provisions of contracts in general.
- 100. — Provisions of building contracts.
 - (1). In general.
 - (2). Change in terms of payment.
 - (3). Change in plans and specifications in general.
 - (4). Provisions as to change in plans.
 - (5). Change in kind or quality of materials.
 - (6). Additional work.
- 101. Alteration of instrument.
 - (1). In general.
 - (2). Materiality of alteration in general.
 - (3). As to names of sureties or obligors.
 - (4). As to nature or amount of obligation or penalty.
 - (5). As to date of instrument and time and place of performance.
 - (6). As to interest on obligation.
- 102. Change in parties to obligation secured.

III. DISCHARGE OF SURETY.(Cont'd)

- 103. Extension of time for payment or other performance.
- 104. — In general.
 - (1). In general.
 - (2). Mortgage or pledge to secure debt of another.
 - (3). Performance of contract in general.
 - (4). Effect of indemnity to surety.
 - (5). Notice to creditor of relation.
- 105. — Requisites and validity of agreement in general.
 - (1). In general.
 - (2). Person granting extension.
 - (3). Taking new or additional obligation.
 - (4). Extension after maturity of obligation.
- 106. — Agreement for definite time.
- 107. — Duration of extension.
- 108. — Consideration.
 - (.5). In general.
 - (1). Necessity in general.
 - (2). Sufficiency of consideration in general.
 - (3). Payment of interest.
 - (4). Payment of usurious interest.
 - (5). Part payment of principal.
- 109. Taking additional or substituted security.
- 110. Judgment and execution against principal.
- 111. Payment or other satisfaction by principal.
- 112. — In general.
- 113. — Application of payments.
- 114. Misapplication of funds or securities by creditor.
- 115. Release or loss of other securities.
 - (1). In general.
 - (2). Acts constituting release or loss of securities in general.
- 116. Release of cosurety.
- 117. Unauthorized payment to principal.
- 118. Discharge of principal without payment or satisfaction.
- 119. Rescission of contract of principal.
- 120. Notice by surety to terminate liability after default of principal.
- 121. Negligence of creditor in general.

309. PRINCIPAL AND SURETY

III. DISCHARGE OF SURETY.(Cont'd)

- 122. Failure to terminate employment or contract after default.
- 123. Neglect to give notice to surety of default.
 - (1). In general.
 - (2). Sufficiency of notice.
 - (3). Effect of omission or delay.
- 124. Neglect to act or proceed against principal.
- 125. — In general.
- 126. — Notice by surety.
 - (5). In general.
 - (1). Necessity and effect of notice.
 - (2). Time for giving notice.
 - (3). Form and sufficiency of notice.
 - (4). Service of notice.
 - (5). Compliance with notice.
 - (6). Effect of noncompliance with notice.
- 127. Reservation by creditor of rights against surety in transactions with principal.
- 128. Consent by surety to transactions between creditor and principal.
 - (1). In general.
 - (2). Extension of time of payment or other performance.
- 129. Waiver or estoppel of surety.
 - (1). In general.
 - (2). Change in contract or obligation.
 - (3). Alteration of instrument.
 - (4). Extension of time of payment or other performance.
 - (5). Unauthorized payment to principal.
- 130. New promise after release.
- 131. Payment or other satisfaction by surety.

IV. REMEDIES OF CREDITORS.

- 132. Nature and form.
- 133. Rights of action against principal.
- 134. Defenses by principal.
- 135. Defense by surety of action against principal.
- 136. Rights of action against surety.
- 137. Conditions precedent to action against surety.
- 138. — In general.
- 139. — Notice and demand.

IV. REMEDIES OF CREDITORS.(Cont'd)

- 140. — Determination as to default and liability of principal.
- 141. Defenses by surety.
- 142. — In general.
- 143. — Defenses of principal available to surety.
- 144. — Set-off or counterclaim of principal.
- 145. Conclusiveness of former adjudication in action against principal or surety.
 - (1). In general.
 - (2). Where surety is party to or has notice of suit.
 - (3). Judgment by default.
- 146. Remedies against estate of deceased surety.
- 147. Recourse to indemnity to surety.
 - (1). In general.
 - (2). Nature and terms of indemnity contract.
 - (3). Nature and validity of obligation of principal.
 - (4). Notice to or privity of creditor.
 - (5). Assignment, release, or other disposition of collateral by surety.
 - (6). Effect of partial or entire payment.
 - (7). Determination or accrual of liability of principal or surety.
 - (8). Insolvency of principal or surety.
 - (9). Rights and remedies of creditors for enforcement of right.
 - (10). Indemnity from third person.
- 148. Jurisdiction and venue.
- 149. Time to sue and limitations.
See also LIMITATION OF ACTIONS.
- 150. Parties.
- 151. — In general.
- 152. — Joinder of defendants.
- 153. Process and appearance.
- 154. Pleading.
- 154.1. — In general.
- 155. — Declaration, complaint, or petition.
- 156. — Plea or answer and subsequent pleadings.
- 157. — Issues, proof, and variance.
- 158. Evidence.
- 158.1. — In general.
- 159. — Presumptions and burden of proof.

309. PRINCIPAL AND SURETY

IV. REMEDIES OF CREDITORS.(Cont'd)

- 160. — Admissibility.
- 161. — Weight and sufficiency.
- 162. Trial.
 - (1). In general.
 - (2). Questions for jury.
 - (3). Instructions.
 - (4). Verdict and findings.
- 163. Judgment.
- 164. Execution.
- 165. Appeal and error.
- 166. Costs.

V. RIGHTS AND REMEDIES OF SURETY.

(A) AS TO CREDITOR.

- 167. Rights of sureties in general.
- 168. Recourse to and exhaustion of remedy against principal.
- 169. Recourse to and exhaustion of other securities.
- 170. Contribution between surety and creditor.
- 171. Recovery of payments to creditor.
- 172. Actions against creditor.

(B) AS TO PRINCIPAL.

- 173. Right of recourse to principal, in general.
- 174. Duty to indemnify surety.
- 175. Contracts and conveyances for indemnity.
- 176. Rights of surety before payment or satisfaction of debt or liability.
- 177. — In general.
- 178. — Accrual of liability as surety.
- 179. — Enforcement of payment by principal or other exoneration.
- 180. — Recourse to indemnity from principal.
- 181. Rights of surety after payment or satisfaction by him of debt or liability.
- 182. — In general.
- 183. — Necessity of payment or satisfaction.
- 184. — Sufficiency of payment or satisfaction.
- 185. — Indemnity or reimbursement.
- 185.5. Rights of surety against estate of deceased principal.

V. RIGHTS AND REMEDIES OF SURETY.(Cont'd)

- 186. Rights of surety as against principal's creditors.
- 187. Conclusiveness as against principal of adjudication against surety.
- 188. Enforcement against principal of execution against surety.
- 189. Summary remedies against principal.
- 190. Actions against principal.
 - (5). In general.
 - (1). Rights of action, and nature and form of remedy.
 - (2). Conditions precedent.
 - (3). Defenses.
 - (4). Time to sue and limitations.
See also LIMITATION OF ACTIONS.
 - (5). Parties.
 - (6). Pleadings.
 - (7). Evidence.
 - (8). Amount or extent of recovery.
 - (9). Trial.
 - (10). Judgment.
- 190.5. Return or recovery of deposit or security to indemnify surety.

(C) AS TO CO-SURETY.

- 191. Relation between cosureties.
- 192. Obligations constituting parties cosureties.
- 193. Recourse to indemnity to cosurety from principal.
- 194. Right to contribution in general.
 - (1). In general.
 - (2). Loss or waiver of right in general.
 - (3). Release or insolvency of principal.
 - (4). Agreement between cosureties.
 - (5). Effect of indemnity from principal.
 - (6). Liability of estate of deceased cosurety.
 - (6.5). Necessity of payment or satisfaction.
 - (7). Mode and sufficiency of payment.
- 195. Discharge of cosurety as affecting liability to contribution.
- 196. Measure of contribution.
- 197. Conclusiveness as between cosureties of adjudication against principal or surety.

**V. RIGHTS AND REMEDIES
OF SURETY.**(Cont'd)

- 198. Enforcement against cosurety of judgment or execution against surety.
- 199. Summary remedies between cosureties.
- 200. Actions between cosureties.
 - (.5). In general.
 - (1). Nature and form of remedy.
 - (2). Grounds of action and conditions precedent.
 - (3). Defenses.
 - (4). Time to sue and limitations.
See also *LIMITATION OF ACTIONS*.
 - (5). Parties.
 - (6). Pleading.
 - (7). Evidence.
 - (8). Trial.
 - (9). Judgment.

310. PRISONS

SUBJECTS INCLUDED

Public buildings for confinement of persons held in judicial custody, in either civil or criminal proceedings, and either to secure their production as parties or witnesses in further proceedings, or as punishment by imprisonment, with or without hard labor, whether such buildings be designated as prisons or as jails, penitentiaries, houses of correction, or otherwise

Establishment, maintenance, regulation, and management of such places

Disabilities and other consequences resulting from status as prisoner

Rights of prisoners

Care, custody, confinement, control, and maintenance of prisoners

Labor of prisoners and convicts and disposition of the products thereof

Proceedings, actions, and litigation involving prisoners

Prison records

Rights of prison visitors and other third parties, and protection of such persons from harm

310. PRISONS

Rights, powers, duties, and liabilities of wardens, jailers, keepers, and other officers and employees

Costs of incarceration

Offenses by prisoners, inmates, or other detainees

Offenses by nonprisoners in connection with prisons

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Aliens, detention and incarceration of, see *ALIENS, IMMIGRATION, AND CITIZENSHIP VI(D)*

Arrest and discharge from arrest, jail limits, prison bounds, poor debtors, etc., see *ARREST, BAIL, CREDITORS' REMEDIES*

Civil rights and antidiscrimination statutes, protection of prisoners under, see *CIVIL RIGHTS*

Constitutional rights of prisoners, see also *CONSTITUTIONAL LAW* and *SENTENCING AND PUNISHMENT VII*

Costs of civil litigation by prisoners, indigence, and proceedings in forma pauperis, see *COSTS VI, FEDERAL CIVIL PROCEDURE* ¶2734

Costs of criminal prosecutions, see *COSTS XIV*

Criminal records, see *CRIMINAL LAW XXVIII*

Cruel and unusual punishment, see also *SENTENCING AND PUNISHMENT VII*

Disabilities and other consequences resulting from status as convict, see *CONVICTS*

Escape as criminal offense, see *ESCAPE*

Insane or mentally ill prisoners, commitment and subsequent confinement, see *MENTAL HEALTH*

Juvenile offenders, agencies and institutions for correction or rehabilitation, see *INFANTS XVII*

Military justice, incarceration in connection with, see *MILITARY JUSTICE* ¶938, 1328

Pardon, clemency, amnesty, reprieve, and commutation, see *PARDON AND PAROLE*

Parole, see *PARDON AND PAROLE*

Probation, see *SENTENCING AND PUNISHMENT IX*

Reformatory institutions, see *INFANTS XVII*

310. PRISONS

Sentencing proceedings and punishment imposed, see SENTENCING AND PUNISHMENT

- I. IN GENERAL, ¶100–109.
- II. PRISONERS AND INMATES, ¶110–349.
 - (A) IN GENERAL, ¶110–119.
 - (B) CARE, CUSTODY, CONFINEMENT, AND CONTROL, ¶120–169.
 - (C) LABOR AND EMPLOYMENT, ¶170–189.
 - (D) HEALTH AND MEDICAL CARE, ¶190–209.
 - (E) PLACE OR MODE OF CONFINEMENT, ¶210–239.
 - (F) DURATION OF CONFINEMENT, ¶240–259.
 - (G) ACCESS TO COURTS AND PUBLIC OFFICIALS, ¶260–269.
 - (H) PROCEEDINGS, ¶270–339.
 - (I) RECORDS, ¶340–349.
- III. PRETRIAL DETENTION, ¶350–379.
- IV. NONPRISONERS, ¶380–389.
- V. OFFICERS AND EMPLOYEES, ¶390–409.
- VI. COSTS OF INCARCERATION, ¶410–429.
- VII. OFFENSES, ¶430–440.

I. IN GENERAL.

- 100. In general.
- 101. Establishment and maintenance.
- 102. Management and operation.
- 103. — In general.
- 104. — Proceedings.
- 105. Judicial supervision, intervention, or review.

II. PRISONERS AND INMATES.

(A) IN GENERAL.

- 110. In general.
- 111. Status, rights, and disabilities in general.
- 112. Regulation and supervision in general; role of courts.
- 113. Particular rights and disabilities.
- 114. Contracts.
- 115. Property and conveyances.
- 116. — In general.
- 117. — Money and finances; inmate accounts.

(B) CARE, CUSTODY, CONFINEMENT, AND CONTROL.

- 120. In general.
- 121. Discipline, security, and safety in general.
- 122. Retaliation in general.
- 123. Particular violations, punishments, deprivations, and conditions.
- 124. Use of force.
- 125. Sexual conduct.
- 126. Protection from violence, assault, or abuse.
- 127. Shackles or other restraints.
- 128. Association in general; prisoner organizations.
- 129. Expression, communications, and censorship in general.
- 130. Privacy in general.
- 131. Threats, intimidation, and harassment; abusive language.
- 132. Personal property and effects; contraband.
- 133. Purchases; commissaries.
- 134. Search, seizure, and confiscation.
- 135. — In general.
- 136. — Particular issues and applications.
- 137. — Strip searches.
- 138. — Samples and tests.
- 139. — Disposition of seized material.
- 140. Reading and writing material; libraries.
Law books, law libraries, and legal materials, see ¶265.
- 141. Visitors.
- 142. — In general.
- 143. — Contact and conjugal visits.
- 144. Mail and correspondence.
- 145. — In general.
- 146. — Incoming.
- 147. — Outgoing.
- 148. — Internal; inmate-to-inmate.
- 149. Telephones.
- 150. Computers; e-mail.
- 151. Religious practices and materials.
- 152. — In general.
- 153. — Hair, grooming, and clothing.
- 154. — Diet and meals.
- 155. — Services, ceremonies, texts, study, and prayer.
- 156. Hazardous and unhealthful conditions; housing.

310. PRISONS

II. PRISONERS AND INMATES.(Cont'd)

- 157. Food and drink.
- 158. Clothing and grooming; bedding and sleeping conditions.
- 159. Recreation and exercise.
- 160. Tobacco.
- 161. Television, motion pictures, and videos; personal electronics.
- 162. Rehabilitation and reformation.
- 163. Education and training.

(C) LABOR AND EMPLOYMENT.

- 170. In general.
- 171. Working conditions.
- 172. Wages or earnings.
- 173. Work assignments; termination.
- 174. Work release.
- 175. Contracts for labor.
- 176. — In general.
- 177. — Validity.
- 178. — Construction and operation.
- 179. — Duration and termination.
- 180. — Actions on contracts.
- 181. — Rights of convict or prisoner.
- 182. Bonds.
- 183. Disposition of products of labor.

(D) HEALTH AND MEDICAL CARE.

- 190. In general.
- 191. Particular conditions and treatments.
- 192. — In general.
- 193. — Dental conditions and treatment.
- 194. — Psychological conditions and treatment.
- 195. Self-harm in general.
- 196. Voluntariness; right to refuse treatment.
- 197. — In general.
- 198. — Psychological treatment.
- 199. — Food and drink.
- 200. Suicide.
- 201. Drug and alcohol treatment.
- 202. Sex-offender treatment.
- 203. Reproductive issues.
- 204. Transsexuals; sex-change operations.

(E) PLACE OR MODE OF CONFINEMENT.

- 210. In general.
- 211. Regulation and supervision in general; role of courts.

II. PRISONERS AND INMATES.(Cont'd)

- 212. Nature or location of facility.
- 213. — In general.
- 214. — Inter-system issues.
- 215. Nature of offense, offender, or sentence.
- 216. — In general.
- 217. — Race.
- 218. — Sex.
- 219. — Sexual orientation or identity.
- 220. — Disability or illness.
- 221. — Mental disability or illness.
- 222. — Sex offenses and offenders.
- 223. Classification; security status.
- 224. Transfer.
- 225. — In general.
- 226. — International transfer.
- 227. — Interstate and state-federal transfer.
- 228. Housing assignments and units; transfer within facility.
- 229. Punitive, disciplinary, or administrative confinement.
- 230. — In general.
- 231. — Segregation.
- 232. — Solitary confinement; isolation.
- 233. — Confinement to cell; lockdown and keeplock.
- 234. Duty to protect; protective confinement.
- 235. Shock incarceration; boot camps.
- 236. Private facilities or management.

(F) DURATION OF CONFINEMENT.

- 240. In general.
- 241. Discharge and release in general.
- 242. Reduction of term in general.
- 243. Good conduct or other earned credits against sentence.
- 244. — In general.
- 245. — Right to credits; eligibility and entitlement.
 - (1). In general.
 - (2). Discretion in general.
 - (3). Particular issues and applications.
 - (4). Participation in treatment programs.
- 246. — Amount and computation of credits.
- 247. — Loss and restoration of credits.

310. PRISONS

II. PRISONERS AND INMATES.(Cont'd)

- 248. Conditional release; community placement.
- 249. Temporary release; furlough.
- 250. Escape.
- 251. — In general.
- 252. — Effect on duration of confinement; good-time credits.

(G) ACCESS TO COURTS AND PUBLIC OFFICIALS.

- 260. In general.
- 261. Legal assistance; right to counsel.
- 262. — In general.
- 263. — Attorney substitutes.
- 264. Communication with courts, officers, or counsel.
- 265. Law books, law libraries, and legal materials.
- 266. Right to provide assistance; opportunity for legal work.
- 267. — In general.
- 268. — Self-representation.

(H) PROCEEDINGS.

- 270. In general.
- 271. Nature and necessity of proceedings; right to notice and hearing.
- 272. — In general.
- 273. — Grievances.
- 274. — Discipline and misconduct.
- 275. — Placement and classification.
- 276. — Transfer.
- 277. — Duration of confinement and good-time credits.
- 278. — Other particular proceedings.
- 279. Requisites, course, and conduct of proceedings.
- 280. — In general.
- 281. — Particular issues and applications.
- 282. — Composition of tribunal; bias.
- 283. — Time for proceedings; prior notice and hearing.
- 284. — Contents and adequacy of notice, petition, or other pleading.
- 285. — Disclosure and discovery.
- 286. — Presence or attendance.
- 287. — Counsel or other assistance.
- 288. — Interpreters.
- 289. — Evidence and witnesses.
 - (1). In general.

II. PRISONERS AND INMATES.(Cont'd)

- (2). Statements, confessions, and admissions; self-incrimination.
- (3). Right to present evidence and witnesses.
- (4). Cross-examination and confrontation.
- 290. — Presumptions, inferences, and burden of proof.
- 291. — Weight and sufficiency of evidence.
 - (1). In general.
 - (2). Grievances.
 - (3). Discipline and misconduct.
 - (4). Placement and classification.
 - (5). Transfer.
 - (6). Duration of confinement and good-time credits.
 - (7). Other particular issues.
- 292. — Determination and disposition; statement of reasons.
- 293. Internal or administrative review.
- 294. Judicial review.
- 295. — In general.
- 296. — Right to intervention or review; jurisdiction.
- 297. — Persons entitled to seek intervention or review; standing; parties.
- 298. — Preservation of error; record; waiver and estoppel.
- 299. — Mootness.
- 300. — Time for proceedings.
- 301. — Scope or standard of review.
- 302. — Harmless error.
- 303. — Course and conduct of proceedings.
- 304. — Determination and disposition.
- 305. — Further review.
- 306. — Costs and fees.
- 307. Actions and litigation.
- 308. — In general.
- 309. — Right of action; restrictions.
- 310. — Presence or appearance.
- 311. — Pleading.
- 312. — Evidence.
- 313. — Trial.
- 314. — Judgment and relief.
- 315. Existence of other remedies; exclusivity.
- 316. Exhaustion of other remedies.

310. PRISONS

II. PRISONERS AND INMATES.(Cont'd)

- 317. — In general.
- 318. — Particular cases.
- 319. — Time.
- 320. — Pleading.
- 321. — Evidence.
- 322. Abuse of proceedings; false or wrongful claims.
- 323. — In general.
- 324. — Frivolous claims; screening.
- 325. — Wrongful proceedings against prisoners; false misconduct reports.
- 326. Rulemaking and rulemaking proceedings.
- 327. — In general.
- 328. — Dissemination of rules, regulations, and policies.
- 329. — Judicial review.

(I) RECORDS.

*Criminal records, see CRIMINAL LAW §1226.
General statutory disclosure requirements, see RECORDS II(B).*

- 340. In general.
- 341. Amendment and expungement.
- 342. Medical records; confidentiality.

III. PRETRIAL DETENTION.

- 350. In general.
- 351. Care, custody, confinement, and control.
- 352. — In general.
- 353. — Particular violations, punishments, deprivations, and conditions.
- 354. — Use of force.
- 355. — Sexual conduct.
- 356. — Protection from violence, assault, or abuse.
- 357. — Threats, intimidation, and harassment; abusive language.
- 358. — Shackles or other restraints.
- 359. — Search, seizure, and confiscation.
- 360. Labor and employment.
- 361. Health and medical care.
- 362. — In general.
- 363. — Self-harm; suicide.
- 364. Place or mode of confinement.
- 365. — In general.
- 366. — Housing assignments; classification and security status.
- 367. — Transfer.

III. PRETRIAL DETENTION.(Cont'd)

- 368. Duration of confinement; discharge and release.
- 369. Access to courts and public officials.
- 370. Proceedings.
- 371. — In general.
- 372. — Judicial review.
- 373. — Actions and litigation.
- 374. Records.

IV. NONPRISONERS.

- 380. In general.
- 381. Injuries and harm; duty to protect.
- 382. Visitors.
- 383. — In general.
- 384. — Injuries and harm; duty to protect.
- 385. — Search, seizure, and confiscation.
- 386. Hostages.

V. OFFICERS AND EMPLOYEES.

- 390. In general.
- 391. Conduct and control in general.
- 392. Hiring or appointment.
- 393. Discipline.
- 394. Promotion, demotion, assignment, and transfer.
- 395. Compensation and benefits.
- 396. Termination.
- 397. Retirement and pensions.
- 398. Liabilities.
- 399. — In general.
- 400. — Immunity.
- 401. Bonds.
- 402. Private employment.

VI. COSTS OF INCARCERATION.

- 410. In general.
- 411. Persons and entities entitled.
- 412. Persons and entities liable.
- 413. — In general.
- 414. — Federal government.
- 415. — State government.
- 416. — Local government.
- 417. — Prisoners.
- 418. — Other particular persons or entities.
- 419. Health and medical care.
- 420. Access to courts and public officials.

310. PRISONS

VII. OFFENSES.

- 430. In general.
- 431. Offenses by prisoners, inmates, or other detainees.
- 432. — In general.
- 433. — Contraband in general.
- 434. — Drugs and alcohol.
- 435. — Weapons.
- 436. — Use of force or violence.
- 437. — Threats, harassment, or intimidation.
- 438. Offenses by non-prisoners.
- 439. — In general.
- 440. — Bringing articles to or communicating with prisoners.

311. PRIVATE ROADS

SUBJECTS INCLUDED

Roads established by public authority for accommodation of private persons, but open for free passage to the public

Nature and scope of power to establish and maintain such roads in general

Constitutional and statutory provisions relating thereto

Establishment of such roads, construction, repair, and improvement thereof, and alteration, vacation and abandonment

Local assessments therefor

Title to and rights in the land occupied, and removal of and liabilities for obstructions, encroachments, etc.

Use of such roads, and liabilities for injuries from defects, obstructions, etc., therein

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Eminent domain, see EMINENT DOMAIN

Rights of way over lands of others, see EASEMENTS

Roads established for public benefit, see HIGHWAYS

- 1. Nature and essentials.
- 2. Establishment.

- (1). In general.
- (2). Jurisdiction and powers of courts and municipal authorities.
- (3). Parties, petition, and bond.
- (4). Commissioners, viewers, jurors, surveyors, and other like officers.
- (5). Judgment, order, or decree, and review.
- (6). Expenses and costs of proceedings.
- (7). Operation and effect.
- 3. Alteration.
- 4. Vacation or abandonment.
- 5. Construction and repair.
- 6. Taxes and assessments.
- 7. Obstructions and encroachments.
- 7.1. — In general.
- 8. — Creation and removal.
- 9. — Civil liability.
- 10. — Criminal responsibility.
- 11. Use for travel.
- 12. Injuries from defects or obstructions.

311H. PRIVILEGED COMMUNICATIONS AND CONFIDENTIALITY

SUBJECTS INCLUDED

Evidentiary and discovery privileges, protecting disclosure of communications between spouses, attorney and client, physician and patient, and mental health professionals and patients

Evidentiary and discovery privileges involving public officers such as executive privilege, classified information privilege, deliberative process privilege, and accident reports

Evidentiary and discovery privileges, protecting disclosure of communications to journalists, clergy, and patent agents

Evidentiary and discovery privileges involving trade secrets, settlement negotiations, mediation, self-critical analysis, peer review, and various other privileges

311H. PRIVILEGED COMMUNICATIONS AND CONFIDENTIALITY

Relations warranting protection of confidential information

Procedures for claiming and determining evidentiary and discovery privileges

Waiver of evidentiary and discovery privileges

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Bankruptcy proceedings, see BANKRUPTCY
Civil commitment proceedings, see MENTAL HEALTH

Confrontation clause, see CRIMINAL LAW

Defamation defense for privileged communications, see LIBEL AND SLANDER

Discovery in general, see CRIMINAL LAW, FEDERAL CIVIL PROCEDURE, PRETRIAL PROCEDURE

Discovery sanctions, see CRIMINAL LAW, FEDERAL CIVIL PROCEDURE, PRETRIAL PROCEDURE

Electronic Communications Privacy Act, see TELECOMMUNICATIONS

First Amendment privilege, see CONSTITUTIONAL LAW

Freedom of Information Act, see RECORDS

Grand jury proceedings, see GRAND JURY

Legislative hearings, see STATES, UNITED STATES

Legislative privilege, see STATES, UNITED STATES

Litigation privilege, see TORTS

Mental health records, see MENTAL HEALTH ¶21

Political vote privilege, see ELECTION LAW

Presentence reports, see SENTENCING AND PUNISHMENT

Privacy Act, see RECORDS

Protective orders in discovery, see CRIMINAL LAW, FEDERAL CIVIL PROCEDURE, PRETRIAL PROCEDURE

Public records, see RECORDS

Self-incrimination privilege, see CRIMINAL LAW, WITNESSES

Sex offender civil commitment or registration proceedings, see MENTAL HEALTH

Tax practitioner privilege, see INTERNAL REVENUE

Trial preparation materials, see CRIMINAL LAW, FEDERAL CIVIL PROCEDURE, PRETRIAL PROCEDURE

Workers' compensation proceedings, see WORKERS' COMPENSATION

Work product privilege, see CRIMINAL LAW, FEDERAL CIVIL PROCEDURE, PRETRIAL PROCEDURE

I. IN GENERAL, ¶1-49.

II. FAMILY PRIVILEGES, ¶50-99.

(A) IN GENERAL, ¶50-59.

(B) SPOUSAL PRIVILEGE, ¶60-99.

III. ATTORNEY-CLIENT PRIVILEGE, ¶100-199.

IV. PHYSICIAN-PATIENT PRIVILEGE, ¶200-299.

V. COUNSELORS AND MENTAL HEALTH PROFESSIONALS, ¶300-349.

VI. PUBLIC OFFICERS AND RECORDS, ¶350-399.

VII. OTHER PRIVILEGES, ¶400-423.

I. IN GENERAL.

1. In general.
2. Definition of "privilege".
3. Constitutional and statutory provisions.
4. What law governs.
5. Purpose in general.
6. Types of privileges.
7. Privileges not favored.
8. Discretion of court.
9. Actions and proceedings in which privilege is applicable.
10. Offensive use doctrine.
11. Construction in general.
12. Disclosure of underlying facts.
13. Mode or form of communications; documents in general.
14. Impeachment or rehabilitation of witnesses.
15. Criminal or wrongful acts or transactions.
16. Confidential or private character of communication.
17. Communications through or in presence or hearing of others; communications with third parties.
18. Effect of termination of relation; duration of privilege.
19. Persons entitled to assert privilege in general.
20. Waiver of privilege.
21. Objections; claim of privilege.

311H. PRIVILEGED COMMUNICATIONS AND CONFIDENTIALITY

I. IN GENERAL.(Cont'd)

- 22. Privilege logs.
- 23. Waiver of objections.
- 24. Evidence.
- 25. — In general.
- 26. — Presumptions and burden of proof.
- 27. — Weight and sufficiency.
- 28. Determination.
- 29. — In general.
- 30. — Questions of law or fact.
- 31. — In camera review.

II. FAMILY PRIVILEGES.

(A) IN GENERAL.

- 50. In general.
- 51. Parent and child.
- 52. Siblings.

(B) SPOUSAL PRIVILEGE.

Excludes spousal testimonial privilege, see WITNESSES §51.

- 60. In general.
- 61. Constitutional and statutory provisions.
- 62. What law governs.
- 63. Purpose of privilege.
- 64. Distinguished from spousal testimonial privilege.
- 65. Actions and proceedings in which privilege is applicable.
- 66. Construction.
- 67. Necessity of valid marriage.
- 68. Mode or form of communications.
- 69. — In general.
- 70. — Writings and documents.
 - (1). In general.
 - (2). Letters and correspondence.
 - (3). Photographs, videos, and tape recordings.
- 71. Observations of acts and conduct; independent knowledge.
- 72. Subject matter in general; particular cases.
- 73. Wrongful acts by both spouses; joint participation.
- 74. Threats.
- 75. Sexual relations.
- 76. Spouse's physical or mental condition.
- 77. Confessions and admissions.

II. FAMILY PRIVILEGES.(Cont'd)

- 78. Business and financial affairs; contracts and conveyances; wills and trusts.
- 79. Impeachment or rehabilitation of witnesses.
- 80. Confidential or private character of communications.
- 81. Communications through or in presence or hearing of others; communications with third parties.
- 82. Communications before marriage.
- 83. Effect of divorce, separation, or death.
- 84. Persons entitled to assert privilege.
- 85. Waiver of privilege.
- 86. Objections; claim of privilege.
- 87. Waiver of objections.
- 88. Evidence.
- 89. — In general.
- 90. — Presumptions and burden of proof.
- 91. Determination.
- 92. — In general.
- 93. — Questions of law or fact.
- 94. — In camera review.

III. ATTORNEY-CLIENT PRIVILEGE.

Excludes duty not to disclose confidential information and liability for disclosing such information, see ATTORNEY AND CLIENT.

- 100. In general.
- 101. Nature of privilege.
- 102. Elements in general; definition.
- 103. Distinguished from work product.
- 104. Constitutional and statutory provisions.
- 105. What law governs.
- 106. Purpose of privilege.
- 107. Privilege not favored.
- 108. Absolute or qualified privilege.
- 109. Discretion of court.
- 110. Actions and proceedings in which privilege is applicable.
- 111. Offensive use doctrine; abuse of privilege.
- 112. Construction.
- 113. Fiduciary exception.
- 114. Self-defense exception; breach of duty between attorney and client.
- 115. Relation of attorney and client.
- 116. — In general.
- 117. — Employment in matters not relating to communication.

311H. PRIVILEGED COMMUNICATIONS AND CONFIDENTIALITY

III. ATTORNEY-CLIENT PRIVILEGE.(Cont'd)

- 118. — Termination of relation.
- 119. — Death of client or attorney.
- 120. Parties and interests represented by attorney.
- 121. — In general.
- 122. — Common interest doctrine; joint clients or joint defense.
- 123. — Corporations, partnerships, associations, and other entities.
- 124. — Insurers and insureds.
- 125. — Trustees, guardians, and administrators; pension plans.
- 126. — Government and government employees and officers.
- 127. — Receivers.
- 128. Professional character of employment or transaction.
- 129. — In general.
- 130. — Business communications.
- 131. — Particular cases.
- 132. Communications from client to attorney and from attorney to client.
- 133. Communications between attorneys.
- 134. Communications to prosecuting attorney.
- 135. Mode or form of communications.
- 136. — In general.
- 137. — Documents and records in general.
- 138. — Minutes of meetings and transcripts.
- 139. — Letters and correspondence.
- 140. — Photographs, videos, and tape recordings.
- 141. — E-mail and electronic communication.
- 142. Effect of delivery of nonprivileged materials to attorney; preexisting documents.
- 143. Factual information; independent knowledge; observations and mental impressions.
- 144. Subject matter; particular cases.
- 145. — In general.
- 146. — Client information; retainer and authority.
- 147. — Date and place of trial or hearing.
- 148. — Mental or physical condition of client in general.
- 149. — Wills, trusts, and estates.

III. ATTORNEY-CLIENT PRIVILEGE.(Cont'd)

- 150. — Conveyances and contracts.
- 151. — Patents and trademarks.
- 152. — Insurance.
- 153. Impeachment or rehabilitation of witnesses.
- 154. Criminal or other wrongful act or transaction; crime-fraud exception.
- 155. Other exceptions.
- 156. Confidential character of communications or advice.
- 157. Communications through or in presence or hearing of others; communications with third parties.
- 158. — In general.
- 159. — Agents or employees of attorney or client in general.
- 160. — Experts and professionals in general.
- 161. — Accountants and auditors.
- 162. — Legal secretaries, stenographers, paralegals, or clerks.
- 163. — Investigators and detectives.
- 164. — Polygraph examiners.
- 165. — Physicians and mental health professionals.
- 166. — Interpreters.
- 167. Persons entitled to assert privilege.
- 168. Waiver of privilege.
- 169. Objections; claim of privilege.
- 170. Waiver of objections.
- 171. Evidence.
- 172. — In general.
- 173. — Presumptions and burden of proof.
- 174. — Weight and sufficiency.
- 175. Determination.
- 176. — In general.
- 177. — Questions of law or fact.
- 178. — In camera review.

IV. PHYSICIAN-PATIENT PRIVILEGE.

Excludes disciplinary proceedings, see HEALTH; excludes duty not to disclose confidential information and liability for disclosing such information, see HEALTH.

- 200. In general.
- 201. Nature of privilege; necessity of statute.
- 202. Elements in general.
- 203. Constitutional and statutory provisions.
- 204. What law governs.
- 205. Purpose of privilege.

311H. PRIVILEGED COMMUNICATIONS AND CONFIDENTIALITY

IV. PHYSICIAN-PATIENT PRIVILEGE. (Cont'd)

- 206. Absolute or qualified privilege.
- 207. Scope of privilege in general.
- 208. Discretion of court; balancing test.
- 209. Actions and proceedings in which privilege is applicable; exceptions and exemptions.
- 210. — In general.
- 211. — Exceptions in general.
- 212. — Dangerousness exception.
- 213. — Criminal cases.
- 214. — Child abuse or neglect.
- 215. — Child custody.
- 216. — Motor vehicle offenses.
- 217. — Medical malpractice actions; self-defense exception.
- 218. — Homicide exception.
- 219. — Criminal or other wrongful acts or transactions; crime-fraud exception.
- 220. Offensive use doctrine.
- 221. Construction.
- 222. Who are physicians.
- 223. — In general.
- 224. — Dentists.
- 225. — Nurses.
- 226. Relation of physician and patient; professional character of employment.
- 227. — In general.
- 228. — Death of patient.
- 229. — Court-ordered examinations; court-appointed physicians.
- 230. Subject matter.
- 231. — In general.
- 232. — Name or identity of patient.
- 233. — Physical condition and treatment in general.
- 234. — Mental condition or sanity in general.
- 235. — Mental condition or sanity; wills and trusts.
- 236. — Place, nature, or cause of injury.
- 237. — Fact of treatment.
- 238. — Blood, tissue, and urine samples and tests.
- 239. — Infectious diseases.
- 240. — Identity of blood donors.
- 241. — Cause of death; autopsy; death certificates.
- 242. — Confessions and admissions.

IV. PHYSICIAN-PATIENT PRIVILEGE. (Cont'd)

- 243. — Threats.
- 244. — Insurance cases.
- 245. — Abortion.
- 246. — Contracts of employment; fee agreements; medical bills.
- 247. Impeachment or rehabilitation of witnesses.
- 248. Emergency medical services.
- 249. Mode or form of communications or information in general; physical evidence.
- 250. Communications between physician and patient.
- 251. Communications with attorneys or other parties; ex parte communications.
- 252. Communications with public officers; duty to report.
- 253. Communications with other health care providers.
- 254. Observations and independent knowledge; factual information.
- 255. Testimonial use of confidential information; hypothetical questions.
- 256. Medical or hospital records or information.
- 257. Photographs and x-rays.
- 258. Prescriptions and pharmacy records; controlled substances.
- 259. Health information statutes and regulations.
See also HEALTH § 196.
- 260. Confidential character of communications or information.
- 261. Communications through or in presence or hearing of others.
- 262. Persons entitled to assert privilege.
- 263. Waiver of privilege.
- 264. — In general.
- 265. — Acts constituting waiver.
- 266. — Waiver by contract; releases.
- 267. Objections; claim of privilege.
- 268. Waiver of objections.
- 269. Evidence.
- 270. — In general.
- 271. — Presumptions and burden of proof.
- 272. — Weight and sufficiency.
- 273. Determination.
- 274. — In general.

311H. PRIVILEGED COMMUNICATIONS AND CONFIDENTIALITY

IV. PHYSICIAN-PATIENT PRIVILEGE.(Cont'd)

- 275. — Questions of law or fact.
- 276. — In camera review.

V. COUNSELORS AND MENTAL HEALTH PROFESSIONALS.

Excludes civil commitment proceedings, see MENTAL HEALTH; excludes sex offender civil commitment or registration proceedings, see MENTAL HEALTH; excludes guardianship proceedings, see GUARDIAN AND WARD, MENTAL HEALTH.

- 300. In general.
- 301. Constitutional and statutory provisions.
- 302. What law governs.
- 303. Actions and proceedings in which privilege is applicable; exceptions and exemptions.
- 304. — In general.
- 305. — Criminal cases.
- 306. — Child abuse or neglect.
- 307. — Child custody.
- 308. — Mental competency or sanity of criminal defendants.
- 309. — Homicide exception.
- 310. Court-ordered examinations; court-appointed professionals.
- 311. Professionals in general; therapists in general.
- 312. Psychotherapists.
- 313. Physicians; psychiatrists.
- 314. Psychologists.
- 315. Marriage counselors; family counselors.
- 316. Social workers.
- 317. Victim-counselors in general.
- 318. Sexual assault counselors.
- 319. Substance abuse.
- 320. Mental health records.
- 321. Mental health information statutes and regulations.
See also MENTAL HEALTH ¶21.
- 322. Persons entitled to assert privilege.
- 323. Waiver of privilege.
- 324. Objections; claim of privilege.
- 325. Waiver of objections.
- 326. Evidence.
- 327. — In general.
- 328. — Presumptions and burden of proof.
- 329. Determination.
- 330. — In general.
- 331. — Questions of law or fact.
- 332. — In camera review.

VI. PUBLIC OFFICERS AND RECORDS.

- 350. In general.
- 351. Official information in general.
- 352. Communications to public officers in general.
- 353. Executive privilege in general.
- 354. — In general.
- 355. — Presidential privilege.
- 356. — Gubernatorial privilege.
- 357. Public interest privilege.
- 358. Investigatory or law enforcement records.
- 359. Surveillance positions and locations.
- 360. Classified information; state secrets; military secrets.
- 361. Deliberative process privilege; mental process privilege.
- 362. Regulation of financial institutions; bank examination privilege.
See also FEDERAL CIVIL PROCEDURE ¶1586, *PRETRIAL PROCEDURE* ¶374.
- 363. Pardon and parole; probation.
- 364. Judicial deliberation privilege; judicial communications.
- 365. Road crossing safety; reports, surveys, or data.
- 366. Personnel files.
- 367. Armed services; veterans.
- 368. Unemployment compensation proceedings and records.
- 369. Licensing boards.
- 370. Social security and public welfare proceedings and records.
- 371. Census information.
- 372. Tax returns or information.
See also FEDERAL CIVIL PROCEDURE ¶1603, *PRETRIAL PROCEDURE* ¶388.
- 373. Accident reports.
See also PRETRIAL PROCEDURE ¶373.
- 374. Informer's privilege; identity of informer.
Excludes compelling disclosure in criminal cases, other than on examination of witnesses, see CRIMINAL LAW.
- 375. Public health records.
- 376. Juvenile records.
See also INFANTS XVIII.
- 377. Criminal records.
- 378. Miscellaneous privileges.

VII. OTHER PRIVILEGES.

- 400. Constitutional privileges in general.
- 401. Privacy in general.
See also CONSTITUTIONAL LAW XI.

311H. PRIVILEGED COMMUNICATIONS AND CONFIDENTIALITY

VII. OTHER PRIVILEGES.(Cont'd)

- 402. Trade secrets; commercial information.
- 403. Clergy and spiritual advisers.
- 404. Journalists.
- 405. Accountant and client.
- 406. Financial information in general.
See also PRETRIAL PROCEDURE ¶375.
- 407. Bank and customer; bank records.
See also FEDERAL CIVIL PROCEDURE ¶1586,
PRETRIAL PROCEDURE ¶374.
- 408. Private investigator privilege.
- 409. Insurer and insured.
See also FEDERAL CIVIL PROCEDURE ¶1595,
PRETRIAL PROCEDURE ¶381.
- 410. School records; teacher and student.
- 411. Scholars and academicians.
- 412. Appraisers.
- 413. Employment relationships; personnel records.
See also FEDERAL CIVIL PROCEDURE ¶1591,
PRETRIAL PROCEDURE ¶378.
- 414. Partners and partnerships.
- 415. Patent agents.
- 416. Labor unions and members.
- 417. Settlement negotiation privilege; mediation and arbitration.
- 418. Self critical analysis.
- 419. Peer review privilege.
- 420. — In general.
- 421. — Academic peer review.
- 422. — Medical or health care peer review.
See also HEALTH ¶200.
 - (1). In general.
 - (2). Waiver.
- 423. Miscellaneous privileges; particular cases.

313. PROCESS

SUBJECTS INCLUDED

Writs, mandates, precepts, or notices, issued by a court or judge, clerk, attorney or other officer, in or incident to proceedings in civil actions in general, and more particularly such instruments by which civil actions are begun, and defendants therein are required

to appear and answer or are notified of the bringing of the action
Issuance, requisites, and validity of such instruments in general
Service thereof, personal or substituted, or by publication; privilege from service, and return
Defects in process or return, and objections therefor, and how objections to process or service may be taken
Amendment of process or return
Quashing or setting aside process or return
Abuse of process in general

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Appearance, waiver of objections to process or service by, see APPEARANCE
Criminal prosecutions, process in, see CRIMINAL LAW, ARREST, EXTRADITION AND DETAINERS, SEARCHES AND SEIZURES
Final process, see CREDITORS' REMEDIES
Justices of the peace, process peculiar to proceedings before, see JUSTICES OF THE PEACE
Malicious prosecution, liability for, see MALICIOUS PROSECUTION
Other particular purposes, process for—

- Arrest or other special remedies in action, see ARREST, CREDITORS' REMEDIES, and other specific topics
- Attendance of—
 - Jurors, see JURY
 - Witnesses, see WITNESSES

Particular actions or proceedings, process in

Bankruptcy and insolvency proceedings, see BANKRUPTCY, CREDITORS' REMEDIES ¶1183

Civil proceedings other than actions, see HABEAS CORPUS, MANDAMUS, PROHIBITION, QUO WARRANTO, SCIRE FACIAS, and topics relating to other special proceedings

Particular civil actions, see AUTOMOBILES, INSURANCE, and other specific topics

Probate proceedings, see EXECUTORS AND ADMINISTRATORS, WILLS

313. PROCESS

Suits in equity or admiralty, see EQUITY, ADMIRALTY

Particular classes of persons, process against and service, see INFANTS, MENTAL HEALTH, CORPORATIONS AND BUSINESS ORGANIZATIONS, and other specific topics

Particular courts, process peculiar to, see COURTS

Review of proceedings in actions, writs and other process for, see APPEAL AND ERROR, CERTIORARI, REVIEW, AUDITA QUERELA

Wrongful use of particular writs or other mandates of courts, see CREDITORS' REMEDIES, INJUNCTION, and other specific topics

I. NATURE, ISSUANCE, REQUISITES, AND VALIDITY, ¶1-47.

II. SERVICE, ¶48-150.

(A) PERSONAL SERVICE IN GENERAL, ¶48-68.

(B) SUBSTITUTED SERVICE, ¶69-83.

(C) PUBLICATION OR OTHER NOTICE, ¶84-111.

(D) PRIVILEGES AND EXEMPTIONS, ¶112-126.

(E) RETURN AND PROOF OF SERVICE, ¶127-150.

III. DEFECTS, OBJECTIONS, AND AMENDMENT, ¶151-171.

IV. ABUSE OF PROCESS, ¶172-213.

(A) IN GENERAL, ¶172-199.

(B) ACTIONS AND PROCEEDINGS, ¶200-213.

I. NATURE, ISSUANCE, REQUISITES, AND VALIDITY.

1. Nature of process in general.
2. Constitutional and statutory provisions.
3. Necessity and use in judicial proceedings.
4. — In general.
5. — Institution of action or proceeding.
6. — After amendment of pleading or other proceeding.
7. Forms of process for institution or notice of action or other proceeding.
8. — In general.
9. — Capias.
10. — Writ of summons.
11. — Summons as notice.
12. — Notice of action.

I. NATURE, ISSUANCE, REQUISITES, AND VALIDITY. (Cont'd)

13. — Warning order.
14. — Particular proceedings.
15. Persons against whom process may issue.
16. — In general.
17. — Citizenship and residence.
18. Authority to issue.
19. Counties or districts to which process may issue.
20. Officer to whom writ may be directed.
21. Time for issuance.
22. Praecipe or direction to issue.
23. Issuance and record thereof.
24. Requisites and validity of writs or other process in general.
25. Entitling.
26. Designation of court and term.
27. Venue or designation of place of trial.
28. Name in which writ should run.
29. Direction to particular officer or county.
30. Command to serve.
31. Direction to or designation of parties.
32. Codefendants.
33. Requirement as to appearance and pleading.
34. Statement as to nature, form, or cause of action.
35. Notice of relief to be demanded.
36. Directions for return.
37. Teste.
38. Date.
39. Signature.
40. Address of plaintiff or attorney.
41. Seal.
42. Indorsements.
43. Delivery to and receipt by officer.
44. Renewal and reissue.
45. Alias and pluries writs.
46. Alteration of writ or other process.
47. Warning order.

II. SERVICE.

(A) PERSONAL SERVICE IN GENERAL.

48. Nature and necessity in general.
49. Statutory provisions.
50. Authority or capacity to serve.
51. — In general.
52. — Officer.

313. PROCESS

II. SERVICE.(Cont'd)

- 53. — Person specially authorized or deputed.
- 54. — Indifferent or disinterested person.
- 55. — Party or person interested.
- 56. Persons to be served.
- 57. — In general.
- 58. — Attorney or agent of party.
- 59. — Codefendants.
- 60. Place for service.
- 61. — In general.
- 62. — Nonresidents.
- 63. Time for service.
- 64. Mode and sufficiency of service.
- 65. Service procured by fraud.
- 66. Service of pleading with process.
- 67. Acceptance or acknowledgment of service.
- 68. Operation and effect.

(B) SUBSTITUTED SERVICE.

- 69. Nature and necessity in general.
- 70. Statutory provisions.
- 71. Actions and proceedings in which substituted service is authorized.
- 72. Persons on whom substituted service may be made.
- 73. Grounds and conditions precedent.
- 74. Application for order.
- 75. Order for substituted service.
- 76. Mode and sufficiency of service.
- 77. — In general.
- 78. — Leaving copy at residence or other place.
- 79. — Leaving copy with member of family or other person.
- 80. — Service on attorney or agent.
- 81. — Posting as constructive service.
- 82. — Mailing as constructive service.
- 83. — Personal service out of jurisdiction.

(C) PUBLICATION OR OTHER NOTICE.

- 84. Nature and necessity in general.
- 85. Statutory provisions.
- 86. Actions and proceedings in which publication is authorized.
- 87. Persons on whom service by publication may be made.
- 88. Grounds and conditions precedent.

II. SERVICE.(Cont'd)

- 89. — In general.
- 90. — Inability to make personal service.
- 91. — Return of process.
- 92. — Sufficiency and filing of declaration, complaint, or other pleading.
- 93. Jurisdiction or authority to order publication.
- 94. Application for order for publication.
- 95. — In general.
- 96. — Affidavits.
 - (1). In general.
 - (2). Requisites and sufficiency in general.
 - (3). Statements as to nature or cause of action.
 - (4). Residence or nonresidence, due diligence, and inability to make personal service.
 - (5). Collateral attack.
- 97. — Hearing and determination.
- 98. Order for publication.
- 99. Filing or record.
- 100. Warning order.
- 101. Notice of action.
- 102. Mode and sufficiency of publication.
- 103. — In general.
- 104. — Notice and other matters to be published.
- 105. — Newspaper or other periodical in which publication to be made.
- 106. — Time and number of publications.
- 107. — Posting in addition to publication.
- 108. — Mailing in addition to publication.
- 109. Personal service out of jurisdiction in lieu of publication.
- 110. Time when service complete.
- 111. Operation and effect.

(D) PRIVILEGES AND EXEMPTIONS.

- 112. Nature and purpose in general.
- 113. Statutory provisions.
- 114. Official position or character.
- 115. Employment in public service.
- 116. Attendance at sessions of Legislature or legislative committee.
- 117. Attendance at court.
- 118. — In general.
- 119. — Parties.

313. PROCESS

II. SERVICE.(Cont'd)

- 120. — Witnesses.
- 121. — Jurors.
- 123. Voters on day of election.
- 124. Day kept holy by party.
- 125. Waiver or loss.
- 126. Protection and enforcement of rights.

(E) RETURN AND PROOF OF SERVICE.

- 127. Nature and necessity in general.
- 128. Statutory provisions.
- 129. Authority to make.
- 130. County or court to which to be made.
- 131. Time for making.
- 132. Form and requisites of return or certificate.
- 133. — In general.
- 134. — Personal service.
- 135. — Substituted or constructive service.
- 136. — Process not served.
- 137. Form and requisites of affidavit of service.
- 138. Proof of service by publication.
- 139. Filing or record.
- 140. Operation and effect in general.
- 141. Conclusiveness of return or certificate in general.
- 142. Collateral attack.
- 143. Grounds for impeaching or contradicting.
- 144. Evidence as to service.
- 144.1. — In general.
- 145. — Presumptions and burden of proof.
- 146. — Admissibility in general.
- 147. — Evidence to aid return, certificate, or affidavit of service.
- 148. — Evidence to impeach or contradict return, certificate, or affidavit of service.
- 149. — Weight and sufficiency.
- 150. Failure to make or file return or proof.

III. DEFECTS, OBJECTIONS, AND AMENDMENT.

- 151. Invalidity or irregularity of process and service in general.
- 151.5. Statutory provisions.
- 152. Defects and irregularities in writ or other process or notice.

III. DEFECTS, OBJECTIONS, AND AMENDMENT.(Cont'd)

- 153. Defects and irregularities in service or return or proof thereof.
- 154. Parties entitled to object.
- 155. Necessity and mode of objection in general.
- 156. Time for objection.
- 157. Quashing or vacating writ or other process or notice.
- 158. Quashing or vacating service or return or proof thereof in general.
- 159. Vacating order for publication and service thereunder.
- 160. Traverse of return.
- 161. Amendment of defects.
- 162. — In general.
- 163. — Writ or other process or notice.
- 164. — Return of proof of service in general.
 - (1). In general.
 - (2). Discretion of court.
 - (3). Defects amendable.
 - (4). Operation and effect.
- 165. — Proceedings for service by publication and proof of service.
- 166. Waiver of defects and objections.
- 167. Cure of defects by subsequent proceedings.

IV. ABUSE OF PROCESS.

Includes the malicious or wrongful abuse or perversion of process rightfully and regularly issued. Malicious "use" of process not rightfully and regularly issued, see FALSE IMPRISONMENT or MALICIOUS PROSECUTION.

(A) IN GENERAL.

- 172. In general.
- 173. Nature and elements in general.
- 174. Process, what constitutes.
- 175. Use of process.
- 176. Malicious prosecution, or other causes of action, distinguished.
- 177. Misuse of process.
- 178. Improper, ulterior, collateral, or unlawful purpose.
- 179. Malice or intent.
- 180. Overt act.
- 181. Termination of underlying proceedings.
- 182. Probable cause.

313. PROCESS

IV. ABUSE OF PROCESS.(Cont'd)

- 183. Resulting damage.
- 184. Defenses in general.
- 185. Advice of counsel.
- 186. Privileges.
- 187. Persons liable; immunity.
- 188. — In general.
- 189. — Non-litigants in general.
- 190. — Attorneys and agents.
- 191. — Officers and public employees.
- 192. Particular cases.

(B) ACTIONS AND PROCEEDINGS.

- 200. In general.
- 201. What law governs.
- 202. Preemption.
- 203. Time to sue; laches.
- 204. Pleading.
- 205. Parties.
- 206. Evidence.
- 207. — In general.
- 208. — Admissibility.
- 209. — Presumptions and burden of proof.
- 210. — Weight and sufficiency.
- 211. Damages; relief granted.
- 212. Trial in general.
- 213. Instructions.

313A. PRODUCTS LIABILITY

SUBJECTS INCLUDED

The liability of manufacturers, distributors, retailers, and others for damage caused by defects or dangers in their products, on theories of strict liability, negligence, and other tort theories

Liability of a pharmacist for injury caused by the dispensing of drugs

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Bailor's liability, see AUTOMOBILES, BAILMENT

Consumer protection statutes, regulation and liability under, see ANTITRUST AND TRADE REGULATION III

Liability of health care professionals other than pharmacists for injury caused by the dispensing of drugs, see HEALTH V

Particular products, liabilities relating to—

Electricity, see ELECTRICITY

Explosives, see EXPLOSIVES

Food, see FOOD

Gas, see GAS

Warranty, liability for breach of, see CONTRACTS, SALES

I. IN GENERAL, ¶100–109.

II. ELEMENTS AND CONCEPTS, ¶110–199.

III. PARTICULAR PRODUCTS, ¶200–299.

IV. ACTIONS, ¶300–451.

(A) IN GENERAL, ¶300–309.

(B) PLEADING, ¶310–329.

(C) EVIDENCE, ¶330–399.

1. IN GENERAL, ¶330–339.

2. PRESUMPTIONS AND BURDEN OF PROOF, ¶340–359.

3. ADMISSIBILITY OF EVIDENCE, ¶360–379.

4. WEIGHT AND SUFFICIENCY OF EVIDENCE, ¶380–399.

(D) QUESTIONS OF LAW OR FACT, ¶400–419.

(E) INSTRUCTIONS, ¶420–449.

(F) VERDICT AND FINDINGS, ¶450–451.

I. IN GENERAL.

100. In general.

101. Constitutional and statutory provisions.

102. — In general.

103. — Validity and constitutionality.

104. — Retroactivity.

105. What law governs.

106. Federal preemption in general.

II. ELEMENTS AND CONCEPTS.

110. In general.

111. Nature and elements in general.

112. Liability as insurer.

113. Strict liability.

114. Negligence or fault.

115. Care required.

313A. PRODUCTS LIABILITY

II. ELEMENTS AND CONCEPTS.(Cont'd)

- 116. Knowledge of defect or danger.
- 117. Representations or concealment; fraud.
- 118. Nature of product and existence of defect or danger.
- 119. — In general.
- 120. — What is a product, in general.
- 121. — Services as distinguished from products.
- 122. — Types of defects actionable.
- 123. — Unavoidably unsafe products.
- 124. — Open and obvious danger.
- 125. Manufacturing defect.
- 126. Design.
- 127. — In general.
- 128. — Alternative design, in general.
- 129. — Risk-utility test.
- 130. — Consumer expectations.
- 131. — Components and raw materials.
- 132. Warnings or instructions.
- 133. — In general.
- 134. — Obvious danger.
- 135. — Intermediaries and third parties, in general.
- 136. — Learned intermediary.
- 137. — Sophisticated user.
- 138. — Bulk suppliers.
- 139. — Component parts.
- 140. — Post-sale duties.
- 141. Precautions or safeguards.
- 142. — In general.
- 143. — Post-sale duties in general.
- 144. — Recall or retrofit.
- 145. Inspection or test.
- 146. Proximate cause.
- 147. — In general.
- 148. — Design.
- 149. — Warnings or instructions.
- 150. Foreseeability in general; foreseeable accident or injury.
- 151. Foreseeable or intended use.
- 152. Foreseeable misuse.
- 153. Lapse of time or change in condition.
- 154. Nature of injury or damage.
- 155. — In general.
- 156. — Economic losses; damage to product itself.
- 157. Persons entitled to sue.
- 158. — In general.

II. ELEMENTS AND CONCEPTS.(Cont'd)

- 159. — Privity of contract as requirement in general.
- 160. — Inherently or imminently dangerous products, privity.
- 161. — Remote or ultimate buyers or users.
- 162. — Bystanders.
- 163. Persons liable.
- 164. — In general.
- 165. — Manufacturers in general; identification.
- 166. — Market share theory.
- 167. — Distributors and wholesalers.
- 168. — Retailers.
- 169. — Occasional or casual sellers.
- 170. — Trademark licensors.
- 171. — Trade associations.
- 172. — Joint tortfeasors in general.
- 173. — Joint and several liability.
- 174. — Components and raw materials; bulk suppliers.
- 175. Defenses in general.
- 176. Limitation of liability.
- 177. Government contractors.
- 178. State of the art.
- 179. Fault of plaintiff or third persons.
- 180. — In general.
- 181. — Contributory negligence, in general.
- 182. — Misuse of product.
- 183. — Comparative negligence and apportionment of fault.
- 184. Assumption of risk.

III. PARTICULAR PRODUCTS.

Each line in this section includes components of, and accessories for, the listed product.

- 200. Aircraft.
- 201. Asbestos.
This line is inclusive as to asbestos contained in other products listed in lines hereunder.
- 202. Automobiles.
- 203. — In general.
- 204. — Brakes.
- 205. — Tires and wheels.
- 206. — Trailers.
- 207. — Motor homes.
- 208. — Crashworthiness in general.

313A. PRODUCTS LIABILITY

III. PARTICULAR PRODUCTS.(Cont'd)

- 209. — Seat belts and occupant restraint systems.
- 210. — Motorcycles.
- 211. Bicycles.
- 212. Boats; watercraft.
- 213. Bottles and other containers.
- 214. Buildings and building components and materials.
Asbestos-related claims, see Ⓒ201.
- 215. Mobile homes.
- 216. Furniture.
- 217. Chemicals in general.
- 218. Adhesives and paints; solvents in general.
- 219. Cleaning products, household and commercial, in general.
- 220. Drain-cleaning products.
- 221. Cosmetics, soaps, and hair-care products.
- 222. Pesticides, herbicides, insecticides, fungicides, and rodenticides.
- 223. Health care and medical products.
- 224. — In general.
- 225. — Drugs in general.
- 226. — Medical devices and appliances in general.
- 227. — Implants and prosthetic devices.
- 228. — Contraceptive drugs and devices.
- 229. — Feminine hygiene products.
- 230. — Vaccines and immunizations.
Government compensation programs, see HEALTH Ⓒ389.
- 231. — Blood and blood products.
- 232. Veterinary drugs and animal health products.
- 233. Feed and seed; pet food.
- 234. Machinery, tools, and appliances in general.
- 235. Miscellaneous machines, tools, and appliances.
- 236. Cranes, elevators, and hoisting apparatus.
- 237. Forklifts and loaders.
- 238. Farm machinery and equipment.
- 239. — In general.
- 240. — Farm tractors.
- 241. — Grain storage and processing; silos.
- 242. Heating equipment and appliances.

III. PARTICULAR PRODUCTS.(Cont'd)

- 243. — In general.
- 244. — Furnaces.
- 245. — Water heaters.
- 246. — Clothes dryers.
- 247. Cooling equipment and appliances.
- 248. — In general.
- 249. — Air conditioners.
- 250. — Refrigerators and freezers.
- 251. Miscellaneous household appliances.
- 252. Food preparation equipment and utensils.
- 253. — In general.
- 254. — Cutting or grinding food.
- 255. — Cooking or heating food; ovens and stoves.
- 256. Ladders and scaffolds.
- 257. Lighters.
- 258. Mining and drilling equipment.
- 259. Mowers; lawn and garden equipment in general.
- 260. Presses and molding machines.
- 261. Railroad cars, engines, and equipment.
- 262. Saws, grinders, and cutters.
Cutting or grinding food, see Ⓒ254.
- 263. Tobacco products.
- 264. Athletic and recreational equipment, in general; toys and games.
- 265. Helmets.
- 266. — In general.
- 267. — Sports and recreational activities in general.
- 268. — Vehicles.
- 269. — Workplace and related uses.
- 270. Swimming pools.
- 271. Computers and software.
- 272. Telecommunications equipment.
- 273. Weapons and ammunition.
- 274. — In general.
- 275. — Handguns.
- 276. — Air guns and BB guns.
- 277. Wearing apparel.
- 278. — In general.
- 279. — Sleepwear.
- 280. — Protective gear.
Helmets, see Ⓒ265.
- 281. Eyewear.
- 282. Miscellaneous products.

313A. PRODUCTS LIABILITY

IV. ACTIONS.

(A) IN GENERAL.

- 300. In general.
- 301. Nature and form of remedy.
- 302. Grounds and conditions precedent.
- 303. — In general.
- 304. — Affidavit or certification of expert.
- 305. Time to sue and limitations.
See also LIMITATION OF ACTIONS.

(B) PLEADING.

- 310. In general.
- 311. Elements in general.
- 312. Strict liability.
- 313. Negligence.
- 314. Nature of product and existence of defect or danger.
- 315. Representations or concealment; fraud.
- 316. Manufacturing defect.
- 317. Design defect.
- 318. Warnings or instructions.
- 319. Proximate cause.
- 320. — In general.
- 321. — Design defect.
- 322. — Warnings or instructions.
- 323. Foreseeable or intended injury or use; foreseeable misuse.
- 324. Defenses and mitigating circumstances.
- 325. — In general.
- 326. — Contributory and comparative fault in general; apportionment.
- 327. — Misuse of product.
- 328. — Assumption of risk.

(C) EVIDENCE.

1. IN GENERAL.

- 330. In general.

2. PRESUMPTIONS AND BURDEN OF PROOF.

- 340. In general.
- 341. Strict liability.
- 342. Negligence.
- 343. Nature of product and existence of defect or danger.
- 344. Representations or concealment; fraud.
- 345. Manufacturing defect.
- 346. Design defect.
- 347. Warnings or instructions.
- 348. Proximate cause.

IV. ACTIONS.(Cont'd)

- 349. — In general.
- 350. — Design defect.
- 351. — Warnings or instructions.
 - (1). In general.
 - (2). Heeding.
- 352. Foreseeable or intended injury or use; foreseeable misuse.
- 353. Defenses and mitigating circumstances.
- 354. — In general.
- 355. — Contributory and comparative fault in general; apportionment.
- 356. — Misuse of product.
- 357. — Assumption of risk.
- 358. Happening of injury, accident, or malfunction, in general.
- 359. Res ipsa loquitur.

3. ADMISSIBILITY OF EVIDENCE.

Evidence of subsequent remedial measures, see EVIDENCE §219.10.

- 360. In general.
- 361. Strict liability.
- 362. Negligence.
- 363. Nature of product and existence of defect or danger.
- 364. Representations or concealment; fraud.
- 365. Manufacturing defect.
- 366. Design defect.
- 367. Warnings or instructions.
- 368. Proximate cause.
- 369. — In general.
- 370. — Design defect.
- 371. — Warnings or instructions.
- 372. Foreseeable or intended injury or use; foreseeable misuse.
- 373. Defenses and mitigating circumstances.
- 374. — In general.
- 375. — Contributory and comparative fault in general; apportionment.
- 376. — Misuse of product.
- 377. — Assumption of risk.
- 378. State of the art.

4. WEIGHT AND SUFFICIENCY OF EVIDENCE.

- 380. In general.
- 381. Standard of proof, in general.
- 382. Strict liability.
- 383. Negligence.

313A. PRODUCTS LIABILITY

IV. ACTIONS.(Cont'd)

- 384. Nature of product and existence of defect or danger.
- 385. Representations or concealment; fraud.
- 386. Manufacturing defect.
- 387. Design defect.
- 388. Warnings or instructions.
- 389. Proximate cause.
- 390. — In general.
- 391. — Design defect.
- 392. — Warnings or instructions.
- 393. Foreseeable or intended injury or use; foreseeable misuse.
- 394. Defenses and mitigating circumstances.
- 395. — In general.
- 396. — Contributory and comparative fault in general; apportionment.
- 397. — Misuse of product.
- 398. — Assumption of risk.

(D) QUESTIONS OF LAW OR FACT.

- 400. In general.
- 401. Strict liability.
- 402. Negligence.
- 403. Nature of product and existence of defect or danger.
- 404. Representations or concealment; fraud.
- 405. Manufacturing defect.
- 406. Design defect.
- 407. Warnings or instructions.
- 408. Proximate cause.
- 409. — In general.
- 410. — Design defect.
- 411. — Warnings or instructions.
- 412. Foreseeable or intended injury or use; foreseeable misuse.
- 413. Defenses and mitigating circumstances.
- 414. — In general.
- 415. — Contributory and comparative fault in general; apportionment.
- 416. — Misuse of product.
- 417. — Assumption of risk.

(E) INSTRUCTIONS.

- 420. In general.
- 421. Strict liability.
- 422. Negligence.
- 423. Nature of product and existence of defect or danger.
- 424. Representations or concealment; fraud.

IV. ACTIONS.(Cont'd)

- 425. Manufacturing defect.
- 426. Design defect.
- 427. Warnings or instructions.
- 428. Proximate cause.
- 429. — In general.
- 430. — Design defect.
- 431. — Warnings or instructions.
- 432. Foreseeable or intended injury or use; foreseeable misuse.
- 433. Defenses and mitigating circumstances.
- 434. — In general.
- 435. — Contributory and comparative fault in general; apportionment.
- 436. — Misuse of product.
- 437. — Assumption of risk.
- 438. Presumptions and burden of proof.
- 439. — In general.
- 440. — Happening of injury, accident, or malfunction in general.
- 441. — Res ipsa loquitur.

(F) VERDICT AND FINDINGS.

- 450. In general.
- 451. Consistency of verdict.

314. PROHIBITION

SUBJECTS INCLUDED

Writs of prohibition or in the nature thereof, forbidding prosecution of particular proceedings before inferior courts or other tribunals, judges, boards, officers, or corporations, as being without or in excess of their jurisdiction

Nature and scope of the remedy in general

Grounds of such writs and defenses thereto

To and against whom and to forbid what proceedings they are allowed

Jurisdiction to grant and proceedings to obtain the writ

Issuance of alternative or absolute writs, requisites and validity thereof, service thereof, return to alternative writs, and proceedings thereon

Judgments or orders and enforcement thereof

315. PROPERTY

Review of proceedings and costs in such proceedings

Disobedience to such writs

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Injunction, preventive relief by, see INJUNCTION

I. NATURE AND GROUNDS, ¶1-15.

II. PROCEDURE, ¶16-35.

I. NATURE AND GROUNDS.

1. Nature and scope of remedy.
2. Constitutional and statutory provisions.
3. Existence and adequacy of other remedies.
 - (1). In general.
 - (2). Remedy by appeal, certiorari, or writ of error in general.
 - (3). Remedy by appeal in particular actions or proceedings.
 - (4). Remedy by appeal in criminal cases.
 - (5). Adequacy of remedy by appeal or writ of error.
4. Discretion as to grant of writ.
5. Acts and proceedings of courts, judges, and judicial officers.
 - (1). In general.
 - (2). Specific acts.
 - (3). Particular proceedings.
 - (4). Proceedings in criminal prosecutions.
6. Acts and proceedings of public officers and boards.
 - (1). In general.
 - (2). Specific acts or proceedings.
 - (3). Title to and possession of office.
7. Acts and proceedings of private corporations and individuals.
8. Grounds for relief.
9. — In general.
10. — Want or excess of jurisdiction.
 - (1). In general.
 - (2). Particular acts or proceedings.
 - (3). Criminal prosecutions.
11. — Errors and irregularities.
12. Defenses and grounds of opposition.
13. Prohibition ineffectual or not beneficial.
14. Abatement of proceedings.
15. Persons entitled to relief.

II. PROCEDURE.

16. Jurisdiction or authority to issue.
17. Presentation of objections in original proceeding.
18. Time for application, and laches.
19. Parties.
20. Petition, suggestion, or other application.
21. Affidavits on application.
22. Notice or rule to show cause.
23. Preliminary or alternative writ.
24. Motion to quash or dismiss rule or alternative writ.
25. Demurrer to petition or to alternative writ.
26. Return or answer and subsequent pleadings.
27. Evidence.
28. Scope of inquiry and powers of court.
29. Hearing and determination.
30. Scope and extent of relief.
31. Judgment or order.
32. Peremptory or absolute writ.
33. Violation of writ and punishment.
34. Appeal and error.
35. Costs.

315. PROPERTY

SUBJECTS INCLUDED

Nature and subjects of rights of property in general

Distinction between different kinds of property

Evidence of title and possession

Matters relating to acquisition, ownership, possession, and transfer of property generally

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Actions and proceedings involving or affecting rights of property, see EJECTMENT and other specific topics

315. PROPERTY

Constitutional guaranties of rights of property, see CONSTITUTIONAL LAW

Estates or interests in property, see ESTATES IN PROPERTY and other specific topics

Particular classes of persons, capacities, rights and liabilities as to property, see ALIENS, IMMIGRATION, AND CITIZENSHIP, CORPORATIONS AND BUSINESS ORGANIZATIONS, DESCENT AND DISTRIBUTION II(C), INFANTS IV, PARENT AND CHILD ¶102 and other specific topics

Particular subjects and incidents of rights of property and modes of transfer, see DEEDS, EASEMENTS, MINES AND MINERALS, and other specific topics

1. Nature of right of property and acquisition in general.
2. Subjects of property.
3. Distinction between real and personal property.
4. — In general.
Nature of interests in cooperative apartments, see COMMON INTEREST COMMUNITIES ¶8.
5. — Conversion or change of form.
Changes in the nature of property as real or personal for equitable purposes in the consideration of the law, see EQUITABLE CONVERSION. Wrongful conversion of personal property, see CONVERSION AND CIVIL THEFT.
- 5.5. Choses or rights in action.
6. What law governs.
7. Ownership and incidents thereof.
8. Tenure of real property.
9. Evidence as to title.
10. Seisin or possession and incidents thereof.
11. Right of alienation.
12. Modes and forms of transfer.

315H. PROSTITUTION

SUBJECTS INCLUDED

Common lewdness in offering or permitting sexual relations indiscriminately, for gain or other purpose

Soliciting or inducing another person to become a prostitute or inmate of a house of prostitution, and placing or keeping a person in such a house

Living with or accepting earnings of a prostitute

Transportation of a person for the purpose of prostitution or other immoral purpose

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Children, offenses against under laws peculiar to infants, see INFANTS

Houses of prostitution, keeping, frequenting, etc., see DISORDERLY HOUSE

Obscene exhibitions, acts, and conduct, see OBSCENITY

10. In general.
11. Constitutional, statutory, and regulatory provisions.
12. — In general.
13. — Purpose.
14. — Validity.
15. Elements of offenses in general.
16. Solicitation.
17. Pimping, pandering, and procuring.
18. Loitering for purposes of prostitution.
19. Federal offenses.
 - (1). In general.
 - (2). Interstate travel.
 - (3). Intent or purpose.
 - (4). Nature of act or conduct.
20. Attempt.
21. Defenses.
22. Persons liable.
23. Indictment and information.
24. Evidence.
25. — In general.
26. — Presumptions and burden of proof.
27. — Admissibility.
28. — Weight and sufficiency.
29. Trial.
30. — In general.
31. — Questions of law and fact.

315P. PROTECTION OF ENDANGERED PERSONS

- 32. — Instructions.
- 33. Extent of punishment.

315P. PROTECTION OF ENDANGERED PERSONS

SUBJECTS INCLUDED

Statutory duties and liabilities of lay persons in the care, protection, and assistance of vulnerable and endangered individuals, including senior citizens and adults incapacitated by physical, mental, emotional, or other disability

Duty to report breaches of such duties and liabilities attendant thereto

Administrative officers and employees, administrative actions and investigations, and duties and liabilities related thereto

Records of abuse, neglect, or other mistreatment by lay persons and issues related thereto

Substantiated findings of abuse against lay persons, registration of abuse and abusers, review and expungement thereof

Crimes against vulnerable adults, prosecutions and propriety of punishment assessed therefor

Protection orders against threatening, disruptive, or criminal conduct between adults

Security or bond to keep the peace, requirements therefor, and liabilities thereon

Protection orders against domestic violence, harassment, and stalking

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Common law duties of care, breaches thereof and liabilities therefor as to vulnerable persons, see FRAUD, HEALTH, NEGLIGENCE, and other topics

Domestic violence, crime and elements of, and prosecutions for, see ASSAULT AND BATTERY

Adult day care, see ASYLUMS AND ASSISTED LIVING FACILITIES

Institutional health care, see HEALTH

Nursing homes and home health care, see HEALTH

Residential facilities for persons with limitations, see ASYLUMS AND ASSISTED LIVING FACILITIES

Respite care, see ASYLUMS AND ASSISTED LIVING FACILITIES

Residential treatment of alcoholics and drug addicts, see CHEMICAL DEPENDENTS

Commitment issues, see MENTAL HEALTH

Protection orders incident to custody disputes, see CHILD CUSTODY

Protection of crime victims and witnesses, see CRIMINAL LAW

Generic criminal law issues, see CRIMINAL LAW

Emotional distress, intentional or negligent infliction, tort of, see DAMAGES

Damages and other procedural aspects of actions for wrongful death, see DEATH

Protection orders incident to divorce, see DIVORCE

Orders for protection of children, see INFANTS

Guardians and guardianships, see GUARDIAN AND WARD, MENTAL HEALTH

Health care, institutional and professional, see HEALTH

Infants and minors, protection of and prosecutions for crimes against, see INFANTS

Substantiated findings of abuse against health professionals, registering and expungement thereof, see HEALTH

Retaliation by employer against employee for reporting abuse of vulnerable and elderly persons, see LABOR AND EMPLOYMENT

Theft from vulnerable or endangered person, see LARCENY

Mental health, institutional and professional care, see MENTAL HEALTH

Discovery protective orders, see PRETRIAL PROCEDURE

Pretrial diversion and other alternative criminal dispositions, see SENTENCING AND PUNISHMENT

Probation, see SENTENCING AND PUNISHMENT

Restitution, see SENTENCING AND PUNISHMENT

315P. PROTECTION OF ENDANGERED PERSONS

Sentence enhancements and guidelines issues, see SENTENCING AND PUNISHMENT

Zoning issues, see ZONING AND PLANNING

I. VULNERABLE OR THREATENED PERSONS IN GENERAL, ¶1-29.

II. SECURITY OR ORDER FOR PEACE OR PROTECTION, ¶30-140.

(A) IN GENERAL, ¶30-39.

(B) GROUNDS IN GENERAL, ¶40-49.

(C) PROCEEDINGS, ¶50-69.

(D) PROTECTION ORDERS IN GENERAL, ¶70-89.

(E) VIOLATIONS, CONTEMPT, AND CONVICTION, ¶90-109.

(F) INTER-JURISDICTIONAL ISSUES, ¶110-119.

(G) APPEAL AND REVIEW, ¶120-139.

(H) COSTS AND FEES, ¶140.

I. VULNERABLE OR THREATENED PERSONS IN GENERAL.

1. In general.
2. Constitutional and statutory provisions.
3. Persons and relationships affected.
4. Elements, grounds, and defenses in general.
5. Deprivation, neglect, or abandonment.
6. Physical or sexual abuse.
See also SEX OFFENSES.
7. Property and finances.
8. Other particular conduct.
9. Duty and failure to report; immunity.
10. Proceedings and prosecution in general.
11. Guardian ad litem or next friend.
12. Damages, sentence, or other remedy.
13. Administrative agencies and proceedings.
14. Protective placement and services.
15. Costs and fees.

II. SECURITY OR ORDER FOR PEACE OR PROTECTION.

(A) IN GENERAL.

30. In general.
31. Constitutional and statutory provisions.
32. Nature and purpose; public policy.
33. Authority and power of courts; discretion.
34. Police response and assistance.

II. SECURITY OR ORDER FOR PEACE OR PROTECTION.(Cont'd)

35. Security for good behavior; peace bonds.
36. Persons and relationships affected.

(B) GROUNDS IN GENERAL.

40. Grounds and considerations in general.
41. Fear and imminence of harm in general; threats.
42. Disorderly conduct and breach of the peace.
43. Harassment, stalking, and surveillance.
44. Criminal, violent, and assaultive conduct in general.
45. Domestic abuse and violence.
46. Owners, neighbors, and boarders.
47. Workplace and employment.
48. Other particular cases.

(C) PROCEEDINGS.

50. Preliminary, ex parte, and emergency relief.
51. Plenary proceedings in general.
52. — In general.
53. — Alternative resolution and settlement.
54. — Parties, right of action, and standing.
55. — Jurisdiction and venue.
56. — Pleading, notice, and process.
57. — Hearing and determination.
58. Evidence.
59. — In general.
60. — Presumptions and burden of proof.
61. — Admissibility.
62. — Weight and sufficiency.

(D) PROTECTION ORDERS IN GENERAL.

70. Judgment or order in general.
71. Opening, vacating, and modifying; new trial.
72. Nature, scope, and operation of order.
73. — In general.
74. — Anti-harassment orders in general.
75. — Domestic abuse orders in general.
76. — Exclusion and “stay away” orders; buffer zones.
77. — “No contact” orders.
78. — Other particular orders or relief.
79. Commencement and duration in general.

315T. PUBLIC AMUSEMENT AND ENTERTAINMENT

II. SECURITY OR ORDER FOR PEACE OR PROTECTION.(Cont'd)

- 80. — In general.
- 81. — Criminal cases.
- 82. Extension, renewal, and conversion.
- 83. Conclusiveness of adjudication; effect.

(E) VIOLATIONS, CONTEMPT, AND CONVICTION.

- 90. Enforcement in general; police.
- 91. Violations and offenses.
- 92. — In general.
- 93. — Elements in general.
- 94. — Notice or knowledge of order.
- 95. — Anti-harassment orders in general.
- 96. — Domestic abuse orders in general.
- 97. — Exclusion and "stay away" orders.
- 98. — "No contact" orders.
- 99. — Other particular orders.
- 100. Nature or degree of violation; contempt.
- 101. Defenses.
- 102. Proceedings in general.
- 103. — In general.
- 104. — Pleading, notice, and process.
- 105. — Evidence.
- 106. — Hearing and determination.
- 107. Judgment or disposition in general.
- 108. Sentence and punishment.

(F) INTER-JURISDICTIONAL ISSUES.

- 110. In general.

(G) APPEAL AND REVIEW.

- 120. In general.
- 121. Decisions reviewable.
- 122. Right of review, parties, and estoppel.
- 123. Preservation of grounds of review.
- 124. Perfection; briefs and assignments.
- 125. Record.
- 126. Dismissal; mootness.
- 127. Standards, scope, and questions on review.
- 128. Trial or review de novo.
- 129. Presumptions and burden of proof.
- 130. Discretion of lower court.
- 131. Questions of fact and findings.
- 132. Harmless error and prejudice.
- 133. Determination and remand.
- 134. Peace bonds and warrants.
- 135. Violations, contempt, and conviction.

(H) COSTS AND FEES.

- 140. In general.

315T. PUBLIC AMUSEMENT AND ENTERTAINMENT

SUBJECTS INCLUDED

Licensing and regulation of places of, and activities offered for, public amusement and entertainment, including theaters and shows, racing, amusement parks and rides, games, sports and athletic activities, skiing, ice skating and winter activities, swimming and diving, dancing and sexually oriented entertainment

Taxes and fees related to the licensing of, admission to, or services provided by the licensee or proprietor of, a covered activity or event

Right of admission or accommodation to places of, and activities offered for, public amusement and entertainment, including exclusion, ejection or control of conduct of persons attending, and ticket sales, pricing and scalping

Liability of owners and operators of public amusements and entertainment for personal injuries sustained by persons attending, whether as a participant or spectator, including duty, standard of care, proximate cause, injury, defenses, mitigating circumstances and statutory limitations of liability, as well as procedural aspects of such actions

Liability of owners and operators of public amusements and entertainment for loss of or injury to personal property of persons attending

Criminal offenses and prosecutions peculiar to places of, and activities offered for, public amusement and entertainment

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Licensing and regulation of fairs, and liability for personal injuries of persons attending, see AGRICULTURE 5